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In The

Supreme Court of the United States

October Term, 1996

COALITION FOR ECONOMIC EQUITY, et al.,

v. *Petitioners,*

PETE WILSON, Governor of the State of California, et al.,

Respondents,

CALIFORNIANS AGAINST DISCRIMINATION AND PREFERENCES, INC.,

Intervenor/Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONSE SUPPORTING PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

It is beyond dispute that our society has not yet succeeded in eliminating the "unhappy persistence of both the practice and the lingering effects of racial discrimination." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 237 (1995). Minorities and women competing for public contracts and seeking public employment continue in many cases to be burdened by "the sorry history of both public and private discrimination in this country." *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 499 (1989). This Court has held that under certain limited circumstances, local governments may – and in some situations, must – engage in race-conscious affirmative action to remedy that history of discrimination. *See, e.g., id.* at 491-92; *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 277, 280 (1986).

Proposition 209 is an amendment to the California Constitution that alters the political process in California by forbidding local governments from engaging in some forms of constitutionally permissible affirmative action. Indeed, the State's Governor and Attorney General have repeatedly asserted that Proposition 209 prevents a local government from engaging even in those race- and gender-conscious programs necessary to remedy a local government's own discriminatory practices. Proposition 209 purports to make these fundamental changes in a way that disadvantages only certain groups – racial minorities and women. As the petition for a writ of certiorari filed by the Coalition for Economic Equity ("the Coalition") makes clear, by skewing the political process to the disadvantage of minorities and women, Proposition 209 violates the Equal Protection Clause. For this reason, and

because of the substantial harm Proposition 209 will cause victims of discrimination in California, the City and County of San Francisco ("San Francisco"), the County of Marin ("Marin"), and the City of Pasadena ("Pasadena") support the Coalition's petition for a writ of certiorari.

In addition, San Francisco, Marin and Pasadena urge this Court to grant the petition because the Ninth Circuit's decision upholding Proposition 209 plunges local governments into a dilemma of constitutional significance. This Court has long recognized the predicament faced by local governments considering remedial affirmative action programs: they are "trapped between the competing hazards of liability to minorities if affirmative action *is not* taken to remedy apparent . . . discrimination and liability to non-minorities if affirmative action *is* taken." *Wygant*, 476 U.S. at 291 (1986) (O'Connor, J., concurring) (emphasis in original).[1] The Ninth Circuit's decision sharpens this dilemma, as this case and other litigation filed since the passage of Proposition 209 amply illustrate. Local governments in California need this Court's guidance to determine when local governments have the authority to implement voluntary affirmative action programs.

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[1] Except as otherwise noted in this brief, all emphasis in quoted material has been added.

STATEMENT OF THE CASE

I. The Status In This Litigation Of San Francisco, Marin And Pasadena

San Francisco administers several affirmative action programs. One such program grants bid preferences to certain local, minority- and woman-owned business enterprises ("MBEs and WBEs") competing for many of San Francisco's contracts. The program is codified as a Chapter 12D of the San Francisco Administrative Code ("the MWBE Ordinance" or "the Ordinance").[2]

To comply with this Court's ruling in *Croson*, San Francisco based the Ordinance on overwhelming statistical and anecdotal evidence of a history of discrimination against MBEs and WBEs. *See Associated General Contractors of California v. Coalition for Economic Equity*, 950 F.2d 1401 (9th Cir. 1991) (finding that San Francisco was likely to prevail on the merits of an Equal Protection challenge to its Ordinance), *cert. denied*, 503 U.S. 985 (1992). That evidence demonstrated both that San Francisco had directly discriminated against MBEs and WBEs, and that "discrimination in the private sector against MBEs and WBEs [had been] manifested in and exacerbated by the City's procurement practices." *Id.* at 1414-15. The evidence also demonstrated that San Francisco had

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[2] Appendix A to this brief contains the version of the MWBE Ordinance in effect at the time this litigation was filed. The Ordinance was scheduled to expire on June 30, 1997. On May 30, 1997, San Francisco adopted Ordinance 210-97, which extended the MWBE Ordinance's expiration date to December 31, 1997, based on additional legislative findings. Ordinance 210-97 is attached as Appendix B.

employed race-neutral measures in an effort to remedy the history of discrimination, but that those measures had proven to be ineffective. *Id.* at 1417.

On November 5, 1996, the voters of the State of California adopted Proposition 209.[3] The next day, the Coalition challenged Proposition 209 on constitutional grounds. The Coalition named as defendants Governor Wilson, Attorney General Lungren ("the State defendants" or "the State"), certain other public officials, and several local public entities including San Francisco, Marin and Pasadena.

Early in this litigation the State made clear that it interpreted Proposition 209 to invalidate San Francisco's Ordinance. Contrary to the State's position, San Francisco believes that it has a duty under the Equal Protection Clause to continue to implement its Ordinance until San Francisco has remedied the effects of past discrimination. Accordingly, although the Coalition named San Francisco as a *defendant*, San Francisco has sided with and submitted evidence in support of the Coalition both in the district court and the court of appeals. In both courts below, Marin has joined in San Francisco's briefs, and Pasadena has filed briefs supporting San Francisco's position.

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[3] The full text of Proposition 209 is included in the Coalition's Appendix E at pages E-15 and E-16. San Francisco, Marin and Pasadena rely on, and therefore do not duplicate, the Appendices submitted by the Coalition.

II. The Procedural History of This Litigation

On November 27, 1996, the district court granted the Coalition's motion for a temporary restraining order. The district court also certified a class of plaintiffs of "all persons or entities who on account of race, sex, color, ethnicity, or national origin, are or will be adversely affected by Proposition 209. . . . " The temporary restraining order prevented the State defendants from implementing or enforcing Proposition 209 pending a hearing on a preliminary injunction.

On December 16, 1996, the district court granted the Coalition's motion to certify a defendant class of "all state officials, local government entities or other governmental instrumentalities bound by Proposition 209." The district court ordered that the temporary restraining order apply to the defendant class.

On December 23, 1996, the district court granted the Coalition's motion for a preliminary injunction. *Coalition for Economic Equity v. Wilson*, 946 F. Supp. 1480 (N.D. Cal. 1996) ("*Coalition I*"). Relying on this Court's opinions in *Hunter v. Erickson*, 393 U.S. 385 (1969), and *Washington v. Seattle School District No. 1*, 458 U.S. 457 (1982), the district court reasoned that Proposition 209 violated the Equal Protection Clause by selectively impeding political access and thus imposing a substantial political burden on the interests of women and minorities. *Coalition I*, 946 F. Supp. at 1508. The district court held that the Equal Protection Clause prohibits such treatment of race and gender issues in the political process. *Id.* at 1499. The district court also held that to the extent that Proposition 209 bans the voluntary use of race and gender preferences by public employers, Title VII preempts Proposition

209 under the Supremacy Clause. *Id.* at 1517. Accordingly, the district court restrained and enjoined the State defendants and all other members of the defendant class, pending trial or final judgment, from "implementing and enforcing Proposition 209 insofar as said amendment to the Constitution of the State of California purports to prohibit or affect affirmative action programs in public employment, public education or public contracting." *Id.* at 1520.

On January 3, 1997, the State defendants and defendant/intervenor Californians Against Discrimination and Preferences ("CADP") filed notices of appeal of the district court's order.

On April 8, 1997, the Ninth Circuit vacated the preliminary injunction. *Coalition for Economic Equity v. Wilson*, 110 F.3d 1431 (9th Cir. 1997) (*"Coalition II"*). The Ninth Circuit held that Proposition 209 neither violates the Equal Protection Clause, nor is preempted by Title VII. *Id.* at 1447-48.

The Coalition filed a petition for rehearing and suggestion for rehearing en banc. On August 21, 1997, the Ninth Circuit denied the petition. Four judges joined in a dissenting opinion to that decision. *Coalition for Economic Equity v. Wilson*, Nos. 97-15030 and 97-15031, 1997 WL 563160 (9th Cir. Aug. 28, 1997) (*"Coalition III"*).

On August 22, 1997, the Coalition filed in the Ninth Circuit an emergency motion seeking a stay of that Court's mandate pending a petition to this Court for a writ of certiorari. On August 25, 1997, San Francisco filed a similar motion, in which Marin joined. On August 26, 1997, the Ninth Circuit denied the motions.

On August 29, 1997, both the Coalition and San Francisco filed in this Court applications to stay the judgment of the Ninth Circuit. On September 4, 1997, this Court denied the applications.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

This Court should grant the Coalition's petition for a writ of certiorari. The Ninth Circuit's opinion upholding Proposition 209 cannot be reconciled with this Court's precedents. Moreover, the constitutional validity of Proposition 209 is an issue of great importance to those citizens who are burdened by a history of discrimination in California. If Proposition 209 is upheld, these citizens may no longer be able to seek from local governments adequate legislative remedies for the effects of past discrimination. In addition, local governments in California need to know whether Proposition 209 can prevent local governments from enacting voluntary affirmative action programs that are constitutionally permissible.

I. On Issues Of Fundamental Constitutional Importance, The Ninth Circuit's Decision Conflicts With This Court's Precedents.

As the Coalition's petition explains in detail, the Ninth Circuit's decision "is contrary to controlling Supreme Court precedent." *Coalition III*, 1997 WL 563160, at *1 (Schroeder, J., dissenting from denial of rehearing *en banc*). The district court and four judges of the Ninth

Circuit found that when the principles this Court established in *Seattle* and *Hunter* are applied to Proposition 209, a court "has no legitimate choice but to declare [Proposition 209] unconstitutional." *Coalition III*, 1997 WL 563160, at *3 (Norris, J., respecting the denial of rehearing *en banc*).

In *Seattle* and *Hunter*, this Court "squarely held that a state violates the Constitution when it attempts to put legislative remedies which benefit minorities at a remote level of government beyond the ordinary legislative process." *Coalition III*, 1997 WL 563160, at *1 (Schroeder, J.). The fundamental principle underlying *Hunter*, later adopted in *Seattle*, is that "a provision that has the clear purpose of making it more difficult for racial . . . minorities to achieve legislation that is in their interest . . . is discriminatory on its face." *Hunter*, 393 U.S. at 395 (Harlan, J. concurring); *see Seattle*, 458 U.S. at 474. "It is the core holding of these cases that the state may not 'place special burdens on the ability of minority groups to achieve beneficial legislation . . . by lodging decisionmaking authority over the question at a new and remote level of government.' " *Coalition III*, 1997 WL 563160, at *2 (Norris, J.) (quoting *Seattle*, 458 U.S. at 483). Proposition 209 places such a burden on women and minorities.[4]

Recently, in evaluating another constitutional amendment that placed "special burdens" on a particular group of a state's citizens, this Court stated:

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[4] Indeed, the Ninth Circuit accepted "without questioning the district court's findings that Proposition 209 burdens members of insular minorities." *Coalition II*, 110 F.3d at 1442.

> Central both to the idea of the rule of law and to our own Constitution's guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance. . . . A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense.

Romer v. Evans, ___ U.S. ___, 116 S. Ct. 1620, 1628 (1996).

Proposition 209 clearly is intended to close the doors of local governments to certain groups of citizens – minorities and women – who seek local governments' assistance, while keeping the doors open to all other groups who seek similar forms of governmental assistance. *See Coalition III*, 1997 WL 563160, at *3 (Norris, J.). Because the Ninth Circuit's decision departs from the fundamental principles articulated in *Hunter, Seattle* and *Romer*, and because the consequences of that decision have extraordinary constitutional significance as discussed below, this Court should grant the Coalition's petition and review the Ninth Circuit's decision.

II. As Interpreted By The Ninth Circuit, Proposition 209 Will Cause Substantial Harm To The Victims Of Past Discrimination.

Although our nation is "dedicat[ed] to eradicating racial discrimination," *Wygant*, 476 U.S. at 280, we have not yet succeeded in eliminating the burden created by a long history of discrimination, a burden under which many minorities and women continue to labor. *See, e.g.*,

Adarand, 515 U.S. at 237 (public contracting); *United States v. Paradise*, 480 U.S. 149, 154-66 (1987) (public employment); *United States v. Fordice*, 505 U.S. 717, 721-27 (1992) (public education); *see also Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 610-11 (1990) (O'Connor, J., dissenting), *overruled in part by Adarand*, 515 U.S. at 227 (competition for public licenses). This Court has made clear that local governments have a role to play in eliminating this burden. Local governments have "compelling interest[s]" in eradicating the effects of discrimination for which the governments themselves are responsible, *see Croson*, 488 U.S. at 518 (Kennedy, J., concurring), and ensuring "that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice." *Id.* at 492.

Many local governments have sought to fulfill this mandate by adopting narrowly tailored affirmative action programs designed to remedy the effects of past discrimination. Because *Croson* limits a government to remedying the effects of discrimination found "within *its own* legislative jurisdiction," and requires an extensive fact gathering process culminating in the adoption of a narrowly tailored remedy, the practical effect of the decision is that *only* local governments will be able to remedy local discrimination. *See id.* at 491-92, 509-10; *see also id.* at 504 (" '[I]t is essential that state and local agencies also establish the presence of discrimination in their own bailiwicks, based either upon their own fact-finding processes or upon determinations made by other competent institutions' ") (quoting, Days, *Fullilove*, 96 Yale L.J.

453, 480-81 (1987)). Inherent in the logic behind *Croson* is the recognition that typically, local governments are in the best position to identify and to implement remedies for local discrimination. *See Missouri v. Jenkins*, 495 U.S. 33, 52 (1990) ("local authorities have 'the primary responsibility for elucidating, assessing, and solving' the problems of desegregation") (quoting *Brown v. Bd. of Educ.*, 349 U.S. 294, 299 (1955)).

To eliminate the vestiges of discrimination and create true equal opportunity, local governments need the flexibility to enact programs targeted at unique local problems. To ensure the success of their programs, local governments often need to devote years of concerted and sustained effort. *See, e.g., Freeman v. Pitts*, 503 U.S. 467, 471-85 (1992); *Fordice*, 505 U.S. at 721-27; *Green v. County Sch. Bd. of New Kent County*, 391 U.S. 430, 437-38 (1968). If Proposition 209 can mandate that local governments abandon these efforts long before they have achieved their objective, those citizens who have been deprived of the ability to compete on an equal footing for opportunities in public education, employment and contracting will likely be relegated to permanent second-class status.

In sum, local affirmative action programs exist to serve local governments' compelling interests in both remedying the effects of past governmental discrimination and ensuring that government does not finance private discrimination. *See Paradise*, 480 U.S. at 167; *Croson*, 488 U.S. at 492. Under *Croson*, such local programs often are the only means by which victims of local discrimination can obtain effective relief. To the extent Proposition

209 stands in the way of these local remedies, it skews the political process to impose "substantial and unique burdens" on minorities and women. *Seattle*, 458 U.S. at 470. Because of the importance of these issues to our society in general, and to victims of discrimination in particular, this Court should grant the Coalition's petition and review the Ninth Circuit's decision.

III. As Interpreted By The Ninth Circuit, Proposition 209 Places Local Governments In A Dilemma Of Substantial Constitutional Significance.

Proposition 209 not only stands to inflict substantial harm on victims of past discriminatory practices, Proposition 209 also imposes significant harm on local governments by intensifying the dilemma identified by this Court over a decade ago:

> [P]ublic employers are trapped between the competing hazards of liability to minorities if affirmative action *is not* taken to remedy apparent employment discrimination and liability to non-minorities if affirmative action *is* taken.

Wygant, 476 U.S. at 291 (O'Connor, J., concurring) (emphasis in original); *see also, Croson*, 488 U.S. at 519 (Kennedy, J., concurring) ("it diminishes the constitutional responsibilities of the political branches to say they must wait to act until ordered to do so by a court").

If local entities continue to administer constitutionally permissible affirmative action programs, they risk being sued by those who believe that Proposition 209 prohibits such programs. Such litigation already has been threatened in San Francisco. *See* Emblidge Declaration at

¶3 (filed in district court), attached as Exhibit C to Delventhal Declaration (filed in Ninth Circuit). And, the threat already has been realized in the City of San Jose. *See High Voltage Wire Works, Inc. v. City of San Jose*, No. CV768694 (Santa Clara Sup. Ct. filed Sept. 9, 1997).

On the other hand, if local entities dismantle affirmative action programs, they risk being sued by those who believe that such programs are required to remedy the effects of past discrimination. After all, the federal constitution does *not permit* a local government to enact a race-conscious remedial program unless that government can show that the program is a narrowly tailored remedy for past discrimination, and unless the program is based on compelling evidence of such discrimination. *Croson*, 488 U.S. at 509. Indeed, even where a local government presents overwhelming evidence of past discrimination, a race-based remedy will not withstand constitutional scrutiny if effective race-neutral alternatives exist. *See id.* at 507. If a legislative body fails to act after compiling a record sufficient to justify race-conscious remedies, the victims of the discrimination surely will travel from the statehouse to the courthouse and present the same body of evidence. Again the potential for such litigation is great. Despite having enacted the MWBE Ordinance, San Francisco has been sued for not doing *enough* to assist minority businesses. *See African American Contractors of San Francisco v. City and County of San Francisco*, No. C93-0637 (N.D. Cal. filed Feb. 22, 1991). And, of course, the day after Proposition 209 passed, the Coalition brought this action to prevent San Francisco from halting implementation of the Ordinance.

Moreover, the Ninth Circuit suggests, albeit in dicta, that under *no* circumstances does a public entity have a constitutional duty to engage in race-conscious affirmative action. *See, e.g., Coalition II,* 110 F.3d at 1446. This suggestion heightens the dilemma identified above. If a local government is confronted with compelling evidence of a history of discrimination, this Court has stated that the local government has a *duty* to act.

In *Wygant,* this Court acknowledged the existence of a constitutional duty to eliminate discrimination in the public employment context, stating: "We have recognized . . . that in order to remedy the effects of prior discrimination, it may be necessary to take race into account." 476 U.S. at 280; *see also id.* at 277 (government has a "constitutional dut[y]" to " 'do away with all governmentally imposed discriminations based on race' ") (quoting *Palmore v. Sidoti,* 466 U.S. 429, 432 (1984)); *id.* at 291 (O'Connor, J., concurring) (states have a "constitutional *duty* to take affirmative steps to eliminate the continuing effects of past unconstitutional discrimination") (emphasis in original).

Three years later, in *Croson,* this Court recognized in the context of affirmative action in government contracting, that the Equal Protection Clause may at times require race-conscious remedial measures. This Court stated that it was "clear" that a "state or local subdivision . . . has the authority to eradicate the effects of private discrimination within its own legislative jurisdiction." 488 U.S. at 491-92. The Court found that in certain cases, "some form of narrowly tailored racial preference might be *necessary* to break down patterns of deliberate exclusion." *Id.* at 509.

In his concurring opinion, Justice Kennedy was more specific, stating:

> For purposes of the ordinance challenged here, it suffices to say that the State has the power to eradicate racial discrimination and its effects in both the public and private sectors, and the *absolute duty* to do so where those wrongs were caused intentionally by the State itself.

Id. at 518 (Kennedy, J., concurring).

In addition, this Court consistently has imposed on governments an affirmative *duty* to desegregate schools. Since *Brown v. Board of Education,* this Court has required school districts to effect "the transition to a system of public education freed of racial discrimination." 349 U.S. at 299. In *Green v. County School Board of New Kent County,* this Court held that the constitution imposes on school districts "the *affirmative duty* to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." 391 U.S. at 437-38. In *Swann v. Charlotte-Mecklenburg Board of Education,* 402 U.S. 1, 15 (1971), this Court found that judicial authority may be invoked when school authorities fail in their "affirmative obligations" to eliminate discrimination. More recently, in *Freeman v. Pitts,* this Court stated: "The duty and responsibility of a school district once segregated by law is to take all steps necessary to eliminate the vestiges of the unconstitutional *de jure* system." 503 U.S. at 485. And, in *United States v. Fordice,* this Court made clear that this duty also exists in the context of once-segregated colleges and universities. 505 U.S. at 729.

The fact that local governments have a duty in certain circumstances to enact race-conscious remedial programs highlights the constitutional flaws in Proposition 209. Local governments need this Court's guidance on the fundamental constitutional question of when, in light of the Ninth Circuit's decision upholding Proposition 209, local governments have the power to enact and to implement voluntary affirmative action programs that are constitutionally permissible.

CONCLUSION

San Francisco, Marin and Pasadena urge this Court to grant the Coalition's petition for a writ of certiorari.

DATED: September 18, 1997

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APPENDIX A

SAN FRANCISCO ADMINISTRATIVE CODE CHAPTER 12D

MINORITY/WOMEN/LOCAL BUSINESS UTILIZATION

Sec. 12D.1.	Short Title.
Sec. 12D.2.	General Findings.
Sec. 12D.2-1.	Additional Findings.
Sec. 12D.3.	Declaration of Policy.
Sec. 12D.4.	Scope.
Sec. 12D.5.	Definitions.
Sec. 12D.6.	Powers and Duties of the Commission and the Director.
Sec. 12D.7.	Powers and Duties of the Controller.
Sec. 12D.8.	Powers and Duties of the Mayor, Departments or Contract Awarding Authorities.
Sec. 12D.9.	Additional Findings Supporting Race- and Gender-Conscious Bid Preferences and Subcontractor Participation Goals – Public Works/Construction: Subcontracting Program.
Sec. 12D.10.	Additional Findings Supporting Race- and Gender-Conscious Bid Preferences – Purchasing Contracts.
Sec. 12D.11.	Additional Findings supporting the Race- and Gender-Conscious Bid Preferences – Consultants and Professional Services.
Sec. 12D.12.	Good-Faith Efforts Required for Other Contracts.
Sec. 12D.13.	Exceptions and Waivers.
Sec. 12D.14.	Monitoring and Compliance.
Sec. 12D.15.	Reporting and Review; Extension.
Sec. 12D.16.	Clerk of Board to Transmit Copies of this Chapter: Informing City Employees.
Sec. 12D.17.	Implementing Regulations.
Sec. 12D.18.	Severability.
Sec. 12D.19.	Effective Date.

SEC. 12 D.1. SHORT TITLE. This ordinance shall be entitled the "Minority/Women/Local Business Utilization Ordinance" and may be cited as the "MBE/WBE/LBE Ordinance – III." (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 155-92, 5/29/92)

SEC. 12D.2. GENERAL FINDINGS. The Board of Supervisors having adopted Ordinance No. 139-84 on April 2, 1984 to address identified discriminatory practices inherent in the City's procurement process which resulted in the virtual exclusion of minority and woman owned businesses as contractors on City prime contracts and to offset economic disadvantages faced by local businesses that are not shared by nonlocal businesses;

And Ordinance No. 139-84 being remedial in nature will expire June 30, 1989 and thus required the Human Rights Commission to study minority and woman owned business participation in City contracting prior to the expiration of that Ordinance;

And the Human Rights Commission, pursuant to Section 12D.15 of Ordinance No. 139-84 having in June and July of 1988 heard the testimony of 42 witnesses, reviewed the transcript and written submittals of 127 minority, women, local and other business representatives, studied the testimonial and statistical evidence presented by the public, City departments, and the Commission's staff to ascertain whether the objectives of Ordinance No. 139-84 had been met and having submitted its October 23, 1988 report to this Board entitled "Investigation into Minority and Women Business Participation in City Contracting, Comprehensive Edition: Findings, Recommendations and Support Documentation";

And the United States Supreme Court on January 23, 1989 having decided **City of Richmond v. Croson** which addresses the constitutionally acceptable quantum of evidence that enables a municipality to adopt a race-conscious remedial ordinance in public contracting;

And the Budget Analyst at the request of this Board having studied the participation of minority and women owned businesses in City contracts at the prime contractor level during fiscal year 1987-1988 and compared this business participation to minority and women businesses' share of their relevant respective industries or professions and having submitted his report dated March 8, 1989 and his revised report dated March 17, 1989 to this Board;

And BPA Economics, Inc. at the request of the City Attorney and the Director of the Human Rights Commission having evaluated statistical evidence provided by City departments and the Budget Analyst, conducted a statistical analysis of these data and having submitted its report entitled "Statistical Support for San Francisco's MBE/WBE/LBE Ordinance," dated May 1, 1989 and his revised report dated May 15, 1989, to this Board;

And this Board, having conducted 10 additional public hearings, taken additional testimony and written submittals, and reviewed the 1983 and 1988 reports of the Human Rights Commission, the 1989 reports of the Budget Analyst, and the 1989 report of BPA Economics, Inc. (all of which shall be incorporated herein by reference) and relying upon this Board's knowledge about the City's compliance with Ordinance No. 139-84, such knowledge having been acquired during the past five years,

This Board hereby makes the following findings:

1. Local businesses that seek to enter into contracts with the City and County of San Francisco continue to labor under a competitive disadvantage with businesses from other areas because of the higher administrative costs of doing business in the City (e.g. higher taxes, higher rents, higher wages and benefits for labor, higher insurance rates, etc.). In 1991, this Board concluded that MBEs and WBEs are currently receiving a very small share of City contracts through joint ventures with majority-owned firms, while a number of well-established LBEs have taken advantage of the five-percent LBE bid preference by joint venturing with each other. The Board concludes that the five-percent MBE/WBE bid preference has not proved sufficiently effective in remedying the exclusion of MBEs and WBEs from City contracts through the vehicle of joint ventures. Accordingly, the Board is granting a seven and one-half percent bid preference to joint ventures with MBE or WBE participation between 40 percent and 50.9 percent to provide more incentives for majority firms to joint venture with MBEs and WBEs to provide services to the City.

2. The public interest is served by continuing to encourage business to locate and remain in San Francisco through the provision of a minimal "good-faith" preference to local businesses in the award of City contracts.

3. Policies and programs that enhance the opportunities and entrepreneurial skills of minority owned, woman owned, and local businesses will best serve the public interest because the growth and development of such businesses will have a significant positive impact on

the economic health of the City and will serve to reduce racial tension in our community.

4. The testimony of businesses that seek to enter into contracts with the City or are doing business with the City, as presented to this Board and as detailed in the Human Rights Commission's 1988 report, offer clear and persuasive reasons for the Board of Supervisors to take the actions proposed by this Ordinance to remedy: (1) City contracting practices and community conditions that cause the exclusion or reduce the opportunities of minority and woman owned businesses to be awarded City contracts to such an extent that the amount of City contract dollars awarded to them can only be explained by discrimination; and (2) competitive disadvantages local business continue to face in providing goods and services to the City.

5. Outreach and advertising efforts by City departments have served to draw more minority and woman business enterprises into the City's procurement process. The City needs to intensify its outreach and advertising efforts as well as its education/training programs to reach a broader segment of the MBE/WBE community. However, past experience has taught that outreach and advertising efforts alone are not enough to remedy the exclusion of minority and women owned businesses as prime contractors with the City.

6. Ordinance No. 139-84 has provided City departments with uniform standards and criteria in the award of contracts. However, these standards have not been applied consistently City-wide. This inconsistent application of the Ordinance continues to give preference to

majority businesses in the prime award process to the detriment of minority and women business enterprises.

7. The bid preference mechanism has the advantage of affording minority, woman and local business enterprises a competitive "plus" when bidding or proposing on City contracts. The bid preference mechanism does not exclude any potential contractor. It encourages competition and thereby ensures that the City is contracting with responsible, efficient contractors. Consequently, the bid preference mechanism has assisted minority, woman and local business enterprises to obtain City contracts. The bid preference is allowed to joint ventures where MBEs and WBEs participate at a managerial and entrepreneurial level with nonminority and nonwoman entrepreneurs. Affording the bid preference to joint ventures has encouraged nonMBE/WBEs to enter into joint venture agreements with MBE/WBEs and compete for City contracts. Several joint ventures of minority/woman and majority/male owned firms have won large construction and professional services contracts with the assistance of the bid preference. The evidence in the record before this Board supports the conclusion that the bid preference invites participation by formerly excluded businesses and hence promotes more competition, resulting in more competitive bids submitted to the City.

8. In Ordinance No. 175-89 this Board concluded that set-asides of contracts, where competition for selected contracts is limited to MBE/WBEs or joint ventures with MBE/WBEs, had been authorized by the Director of the Human Rights Commission only on rare occasions over the past five years (1984-1985). Before the adoption of Ordinance No. 175-89, the Director had

regarded the contract set-aside mechanism as a measure to be used in last-resort type cases where a department could demonstrate, despite its good-faith efforts and the application of the bid preference, that it had failed substantially to eliminate the exclusion of MBEs and WBEs from City contracting. In 1989, at the time Ordinance No. 175-89 was adopted, this Board concluded that despite the claim by several departments that the contract set-aside mechanism was essential to ensure participation by MBE/WBEs, the City had made steady progress City-wide toward the MBE/WBE goals while only making sparing use of the contract set-aside mechanism. However, in 1991, this board found that the use of good-faith efforts and the application of the bid preference did not appear in all cases to be a sufficient remedy for opening the closed environment in which City departments operate or correcting the identified discriminatory practices of the City against MBEs and WBEs. The Board reaffirms its 1991 finding that setting aside contracts limited to competition among MBE/WBEs or joint ventures with MBE/WBEs is a necessary remedy in those limited cases where a department can demonstrate, despite its good-faith efforts and the application of the bid preference, that it has failed substantially to eliminate the exclusion of MBEs and WBEs from City contracting.

9. Without the Ordinance, many small MBE/WBEs would be unable to compete for and win awards of prime City contracts.

10. Some City departments continue to operate under the "old boy network" when awarding contracts. The City's "old boy network" constitutes a closed business system created and implemented by the City for all

contracts, including those subject to the competitive bid process. Discrimination against and insensitivity to MBEs and WBEs continue to persist in the City's procurement process. The closed environment in which City businesses operate has excluded MBEs and WBEs and has placed them under a competitive disadvantage when competing for City prime contracts.

11. The statistical evidence before this Board relating to the award of contracts subject to this Ordinance for fiscal year 1987-1988 reflects that in almost all areas of contracting MBEs (each ethnic group identified as a minority) and WBEs continue to be awarded contract dollars that are disproportionately lower than the available numbers of MBEs and WBEs in San Francisco. These data are gathered and summarized in Appendix X, which contains utilization indices described as Tables 1 through 7, and 10 through 11, and is attached to this Ordinance and incorporated herein by reference as though fully set forth. These utilization indices measure the disparity between MBEs (as a group and each ethnic group identified as a minority) or WBE participation in City prime contracts and their share of their relevant industry or profession. That disparity is measured in terms of a statistical significance. When measure of the statistical significance is minus two (-2) or less, the board concludes that the disparity cannot be attributed to chance. Based upon the weight of the testimony and other evidence before this Board and the Commission in 1983, 1984, 1988 and 1989, the Board finds that the statistical disparities can only be attributed to discriminatory procurement practices of the City against MBEs and WBEs.

Based on the testimony and other evidence before this Board and the Commission in 1983, 1984, 1988 and 1989, the Board finds that the aforementioned statistical disparities are also attributed to discrimination in the private sector against MBEs and WBEs that is manifested in and perpetuated and exacerbated by the City's procurement practices.

12. Consistent with Ordinance No. 139-84, on December 19, 1988 the Board of Supervisors adopted legislation which requires the City's Risk Manager to develop uniform insurance requirements for City contracts. On May 2, 1989 the Risk Manager established these uniform standards which are set forth in a document entitled "Contract Insurance Manual." This manual is intended to be a guide for contract administrators to standardize bond and insurance requirements in City contracts.

13. Consistent with Ordinance No. 139-84, the Board of Supervisors has also considered whether to: (1) create a special revolving fund to assist newly established MBEs and WBEs to meet bonding and other fee-related requirements; and (2) relax or waive bonding requirements on certain contracts to facilitate MBE/WBE participation. In view of the City's budgetary constraints and the opposition voiced by segments of the local business community, this Board finds that creation of a special revolving fund, or relaxation or waiver of bonding requirements is not feasible at this time. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 155-92, 5/29/92)

SEC. 12D.2-1. ADDITIONAL FINDINGS. Upon the expiration of Ordinance No. 139-84 this Board having

adopted Ordinance No. 175-89 on May 30, 1989 to address the same types of practices and to offset the same types of economic disadvantages identified in Section 12D.2;

And Ordinance No. 175-89 as amended being remedial in nature will expire June 30, 1992 and thus required the Human Rights Commission to study minority and woman owned business participation in City contracting prior to the expiration of Ordinance 175-89;

And the Human Rights Commission, pursuant to Section 12D.15 of Ordinance No. 175-89 having in January and February of 1992 hear the testimony of 68 witnesses, reviewed the transcripts and written submittals of 54 minority, women, local and other business representatives, studied the testimonial and statistical evidence presented by the public, City departments, and the Commission's staff to ascertain whether the objectives of Ordinance No. 175-89 as amended had been met and having submitted to this Board its February 28, 1992, "Sunset Report" and its March 2, 1992 "Progress Report FY 1990-91";

And this Board, having conducted additional public hearings, taken additional testimony and written submittals, and reviewed the Human Rights Commission's February 28, 1992 "Sunset Report" and its March 2, 1992 "Progress Report FY 1990-91" (all of which shall be incorporated by reference);

And this Board incorporating by reference the findings set forth in Section 12D.2 above;

And relying upon this Board's knowledge acquired during the past eight years about the City's compliance with the MBE/WBE/LBE Ordinances and all amendments thereto. This Board hereby finds that the purposes of the MBE/WBE/LBE Ordinances and the amendments thereto have not been fulfilled and that it is necessary to extend Ordinance No. 175-89 as amended for an additional five-year period. (Added by Ord. 155-92, App. 5/29/92)

SEC. 12D.3. DECLARATION OF POLICY. It is the policy of the City and County of San Francisco to ensure full and equitable opportunities for Minority Business Enterprises, Woman Business Enterprises, and local businesses to participate as prime contractors in the provision of goods and services to the City. This program is intended to correct identified discriminatory practices inherent in the City's procurement process and in the award of prime contracts to MBE/WBEs and to develop their status and capability as prime contractors of the City. Another goal of this Ordinance is to offset some of the economic disadvantages local businesses continue to face that are not shared by nonlocal businesses.

The City will continue to rely on the relationship between the percentages of minority (each ethnic group identified as a minority) and women owned businesses in the relevant sector of the San Francisco business community and their respective shares of City contract dollars as a measure of the effectiveness of this Ordinance in remedying the effects of the aforementioned discrimination.

The City is continuing to use a preference for local business in the award of City contracts in order to

encourage business to locate and remain in San Francisco and thereby enhance employment opportunities for persons living in San Francisco. The cost of locating and doing business in San Francisco continues to be as much as 15 percent and greater than the cost of doing business in the surrounding communities; affording a five-percent bid preference for local businesses bidding on City contracts reduces the disadvantages under which City-located businesses labor when competing for City contracts, affording them a five-percent bid preference makes good sense. In effect the bid preference assists these businesses in contributing to the economic health of the City. The five-percent bid preference does not unduly hamper non-local businesses in the contracting process, and parallels the preferences awarded in many other local jurisdictions. (Added by Ord. 175-89, App. 5/30/89)

SEC. 12D.4. SCOPE. The race- and gender-conscious bid preferences of this Ordinance shall be afforded only to economically disadvantaged minority and women owned businesses in all specifically enumerated categories of City contracts for the procurement of goods and services subject to exemptions hereinafter specifically enumerated. The local business bid preference shall be afforded to all local businesses in the award of all City contracts for the procurement of goods and services subject to exceptions hereinafter specifically enumerated in Section 12D.13. (Added by Ord. 175-89, App. 5/30/89)

SEC. 12D.5. DEFINITIONS. "Annual participation goals" shall mean the targeted levels of City-wide MBE/WBE participation in City prime contracts that reflect the relevant share of MBEs or WBEs in a given industry or profession referred to as "percent availability" in the

utilization indices contained in Appendix X to this Ordinance.

"Award of a contract" occurs when a contract is certified by the Controller of the City and County of San Francisco.

"Back contracting" shall mean any agreement or other arrangement between a prime contractor and its subcontractor where the prime contractor performs or secures the performance of the subcontract in such a fashion and/or under such terms and conditions that the prime contractor enjoys the financial benefits of the subcontract. Said agreement or other arrangement includes, but is not limited to, situations where either a contractor or subcontractor agrees that any term, condition or obligation imposed upon the subcontractor by the subcontract shall be performed by or be the responsibility of the prime contractor.

"Bid" shall mean and include a quotation, proposal, solicitation or offer by a bidder or contractor to perform or provide labor, materials, equipment, supplies or services to the City and County of San Francisco for a price.

"Bidder" shall mean any business that submits a quotation, bid or proposal to provide labor, materials, equipment, supplies or services to the City and County of San Francisco.

"City" shall mean the City and County of San Francisco.

"Commercially useful function" for purposes of determining whether a business is a Minority Business Enterprise, Woman Business Enterprise or Local Business

Enterprise shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the City as required by the solicitation or request for quotes, bids or proposals MBEs, WBEs or LBEs who engaged in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the department.

"Commission" shall mean the Human Rights Commission of the City and County of San Francisco.

"Concession" shall include any grant of land or other property by or on behalf of the City and County of San Francisco to a person for the purpose or use specified in said grant. A "concession" shall not include an agreement to perform construction-related services.

"Contract" shall mean and include any agreement between the City and a person to provide or procure labor, materials, equipment, supplies or services to, for or on behalf of the City and County of San Francisco. A "contract" shall include an agreement between the City and a person or nonprofit entity to perform construction-related services or fund the performance of such services. Except as otherwise specifically defined in this section, a "contract" does not include: (1) awards made by the City with Federal/State grant or City general fund monies to a nonprofit entity where the City offers assistance, guidance, or supervision on a project or program and the recipient of the grant award uses the grant monies to provide services to the community; (2) sales transactions

where the City sells its personal or real property; (3) a loan transaction where the City is acting as a debtor or a creditor; (4) lease, franchise, or concession agreements; (5) agreements to use City real property; or (6) gifts of materials, equipment, supplies or services to the City.

"Contract awarding authority" shall mean the City officer, department, commission, employee or board authorized to enter into contracts on behalf of the City. In the case of an agreement with a person or nonprofit entity to perform or fund the performance of construction-related services, the term "contract awarding authority" shall mean the person or nonprofit entity receiving funds from the City to perform or fund the performance of such services.

"Contractor" shall mean any person(s), firm, partnership, corporation, or combination thereof, who submits a bid to perform, performs any part of, agrees with a person to provide services relating to and/or enters into a contract with department heads and officers or contract awarding authorities empowered by law to enter into contracts on the part of the City for public works or improvements to be performed, or for goods or services or supplies to be purchased at the expense of the City or to be paid out of monies deposited in the treasury or out of trust monies under the control of or collected by the City.

"Controlled" for the purposes of determining whether a business is a Minority Business Enterprise, or Woman Business Enterprise, shall mean the minority(ies), the woman or combination of minorities and women, as the context requires, shall (1) possess legal authority and

power to manage business assets, good will and daily operations of the business; and (2) actively and continuously exercise such authority and power in determining the policies and directing the operations of the business.

"Director" shall mean the Director of the Human Rights Commission of San Francisco.

"Economically disadvantaged business" shall mean a business whose average gross annual receipts in the three fiscal years immediately preceding its application for certification as a MBE, WBE or LBE do not exceed the following limits: (1) Public works/construction – $14,000,000; (2) Goods/materials/equipment and general services suppliers – $2,000,000; (3) Professional services – $2,000,000.

"Equipment and supplies contract" shall mean term purchase agreements, contract orders, purchase orders and any other agreement for the purchase of transportation equipment, office supplies, data processing and office equipment, hospital and medical equipment and supplies, food, building supplies, fire/safety equipment and supplies, clothing, miscellaneous and electrical equipment and supplies. The term "equipment and supplies contract" shall not include contracts for fuels, lubricants and illuminants.

"Franchise" shall mean and include the right or privilege conferred by grant from the City and County of San Francisco, or any contracting agency thereof, and vested in and authorizing a person to conduct such business or engage in such activity as is specified in the grant. A "franchise" shall not include an agreement to perform construction-related services.

"General services contract" shall mean term purchase agreements, contract orders, purchase orders and any other agreement for the procurement of janitorial, security, equipment and computer maintenance, miscellaneous, printing and graphics services.

"Good-faith efforts" when required of a contract awarding authority or department shall mean the actions undertaken by a department to obtain MBE or WBE participation in a contract as prime contractors, and shall include the following efforts: (1) encouraging MBE/WBEs to attend pre-bid meetings, scheduled by a department or the Commission, to inform potential contractors of contracting opportunities; (2) advertising in general circulation media, trade association publications and minority/woman business focus media; (3) notifying MBE/WBEs who are available to perform the work contemplated in a contract, soliciting their interest in the contract; (4) dividing the contract work into economically feasible units to facilitate MBE/WBE participation in the contract; (5) pursuing solicitations of interest by contacting MBE/WBEs to determine whether these businesses are interested in participating on the contract; (6) providing MBE/WBEs with adequate information about the plan, specifications and requirements of the contract; (7) where applicable, negotiating with MBE/WBEs in good faith and demonstrating that MBE/WBEs were not rejected as unqualified without sound reasons based on a thorough investigation of their capabilities; and (8) using the services of available community and contractors' groups, local, State or Federal minority and woman business assistance offices that provide assistance in the recruitment of MBE/WBEs for public sector contracts.

"Good-faith efforts" when required of a prime public works/construction contractor or professional services provider shall mean the steps undertaken to comply with the goals and requirements imposed by the City for participation by minority and women business enterprises as subcontractors, and shall include the following:

(1) Attending any presolicitation or prebid meetings scheduled by the City to inform all bidders of the minority and women business enterprise program requirements for the project for which the contract will be awarded;

(2) Identifying and selecting specific items of the project for which the contract will be awarded to be performed by minority or women business enterprises to provide an opportunity for participation by those enterprises;

(3) Advertising, not less than 10 calendar days before the date the bids are opened, in one or more daily or weekly newspapers, trade association publications, minority or trade-oriented publications; trade journals, or other media, specified by the City for minority or women business enterprises that are interested in participating in the project. This paragraph applies only if the City gave public notice of the project not less than 15 calendar days prior to the date the bids are opened;

(4) Providing written notice of his or her interest in bidding on the contract to the number of minority or women business enterprises required to be notified by the project specifications not less than 10 calendar days prior to the opening of bids. The City shall make available to the bidder not less than 15 calendar days prior to the date the bids are opened a list or a source of lists of

enterprises which are certified by the Director as minority or women business enterprises;

(5) Following up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project;

(6) Providing interested minority and women business enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work;

(7) Requesting assistance from minority and women community organizations; minority and women contractor or professional groups; local, State or Federal minority and women business assistance offices; or other organizations that provide assistance in the recruitment and placement of minority or women business enterprises, if any are available;

(8) Negotiating in good faith with the minority or women business enterprises, and not unjustifiably rejecting as unsatisfactory bids or proposals prepared by any minority or women business enterprises, as determined by the City;

(9) Where applicable, advising and making efforts to assist interested minority and women business enterprises in obtaining bonds, lines of credit, or insurance required by the City or contractor;

(10) Making efforts to obtain minority and women business enterprise participation that the City could reasonably expect would produce a level of participation sufficient to meet the City's goals and requirements.

"Human Rights Commission (HRC)" shall mean the Human Rights Commission of San Francisco, consisting of Commissioners appointed by the Mayor; hereinafter, it shall be referred to as the "Commission."

"Joint venture" shall mean and may be referred to as an "Association" of two or more businesses acting as a contractor and performing or providing services on a contract, in which each joint venture or association partner combines property, capital, efforts, skill, and/or knowledge.

"Lease" shall mean and include an agreement by which the City and County of San Francisco or any contracting agency thereof, grants to a person the temporary possession and use of property for reward, and the latter agrees to return the same to the former at a future time. A "lease" shall not include an agreement to perform construction-related services.

"Local business" or "Local business enterprise (LBE)" shall mean an economically disadvantaged business which is an independent and continuing business for profit, performs a commercially useful function and is a firm:

(1) With fixed offices or distribution points located within the geographical boundaries of the City and County of San Francisco;

(2) Listed in the Permits and License Tax Paid File with a San Francisco business street address; and

(3) Which possesses a current Business Tax Registration Certificate at the time of the application for certification as a local business. Post Office box numbers or

residential addresses shall not suffice to establish status as a "local business." To qualify as a "local business" or "LBE" a business must establish that it has been located and doing business in San Francisco for at least six months preceding its application for certification as a local business.

"Lower-tier subcontracting" shall mean any agreement or other arrangement between a subcontractor and a person as defined herein where it is agreed that said person shall perform any term, condition or obligation imposed by the subcontract upon the subcontractor.

"Minority," "minorities," or "minority person" shall mean members of one of the following ethnic groups: Asians (defined as Chinese, Japanese, Koreans, Pacific Islanders, Samoans, Filipinos, Asian Indians, and Southeast Asians), Blacks, and Latinos (defined as Mexicans, Puerto Ricans, Cubans, Central or South Americans).

"Minority Business Enterprise (MBE)" shall mean an economically disadvantaged local business which is an independent and continuing business for profit, performs a commercially useful function, and is owned and controlled by one or more minority persons residing in the United States or its territories.

"Miscellaneous professional services" shall mean all professional services except legal, architect/engineer, computer systems, management consulting and medical services.

"Office" or "offices" shall mean a fixed and established place where work is carried on of a clerical, administrative, professional or production nature directly

pertinent to the business being certified. A temporary location or movable property or one that was established to oversee a project such as a construction project office does not qualify as an "office" under the Ordinance.

"Owned," for purposes of determining whether a business is a minority business enterprise or woman business enterprise, shall mean that the minorities or women as the context requires, shall possess an ownership interest of at least 51 percent of the business, and shall:

(1) Possess incidents of ownership, such as an interest in profit and loss, equal to at least the required ownership interest percentage; and

(2) Contribute capital, equipment and expertise to the business equal to at least the required ownership percentage.

Ownership of an individual seeking MBE or WBE certification shall be measured as though the applicant's ownership is not subject to the community property interest of a spouse, if both spouses certify that (a) only the woman or minority spouse participates in the management of the business and (b) the nonparticipating spouse relinquishes control over his/her community property interest in the subject business; or both spouses have bona fide management and control of the business.

"Participation commitment" shall mean the targeted level of MBE/WBE subcontractor participation that each prime public works/construction contractor or professional service provider has designated in its bid.

"Participation goals" shall mean the targeted levels of City-wide MBE/WBE participation in City prime contracts that reflect the relevant share of MBEs or WBEs in a given industry or profession referred to as "percent availability" in the utilization indices contained in Appendix X to this Ordinance.

"Percent availability"; see "Participation goals."

"Person" includes one or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers, or any group of persons, including any official, agent or employee of the City and County of San Francisco.

"Professional services contract" shall mean agreements for the procurement of legal, architect/engineer, computer systems, management consulting, medical services and miscellaneous professional services.

"Public works/construction contract" shall mean agreements for the construction, reconstruction or repair of public buildings, streets, utilities or other public works or improvements.

"Set aside" when referring to a contract or project shall mean a procurement or contract award process where competition for a contract or project is limited to MBEs, WBEs and/or joint ventures with MBE/WBEs.

"Subcontractor" shall mean any business providing goods or services to a contractor for profit, if such goods or services are procured or used in fulfillment of the contractor's obligations arising from a contract with the City and County of San Francisco.

"Subcontractor participation goals" shall mean the targeted level of MBE/WBE subcontractor participation designated by the Director for prime public works/construction and professional services contracts.

"Woman Business Enterprise (WBE)" shall mean an economically disadvantaged local business which is an independent and continuing business for profit, performs a commercially useful function and is owned and controlled by one or more women residing in the United States or its territories.

"Woman/Minority Man Business Enterprise (W/MBE)" shall mean an economically disadvantaged local business which meets the definition of an MBE or WBE, except that the aggregate ownership interest of the woman and the minority man equals or exceeds 51 percent of the business. An W/MBE shall qualify and be deemed by a department an MBE or WBE, but not both, for purposes of this Ordinance. Any reference in this Ordinance to MBE or WBE includes a W/MBE. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 190-91, App. 5/31/91; Ord. 283-91, App. 6/12/91; Ord. 76-92, App. 3/13/92; Ord. 155-92, App. 5/29/92; Ord. 284-92, App. 9/16/92)

SEC. 12D.6. POWERS AND DUTIES OF THE COMMISSION AND THE DIRECTOR. (A) In addition to the duties and powers given to the Human Rights Commission elsewhere, the Commission shall:

1. Collect and analyze relevant data which will assist the Board of Supervisors in determining whether race-or gender-conscious remedies are appropriate and necessary for contracts not subject to or ethnic groups not

afforded the race- and gender-conscious bid preferences of this ordinance. The Commission shall periodically report the results of this study to this Board;

2. Levy sanctions as specified in Section 12D.8(B)(7);

3. When necessary, subpoena persons and records, books and documents for a proceeding of the Commission or an investigation by the Director conducted to further the purposes of this ordinance;

4. Amend existing rules and regulations establishing standards and procedures for effectively carrying out this ordinance. The rules and regulations shall provide for administrative procedures which will allow a business to prove and the Commission to recommend to this Board that the ordinance's remedial measures should not be applied to an industry or profession because MBE/WBE participation in City prime contracts has reached parity with their numbers in the relevant business community and MBE/WBEs no longer suffer from a discrimination-induced competitive disadvantage in the applicable industry or profession. The regulations shall also provide a mechanism for contractors to seek a determination by the Director that a MBE or WBE may not be granted a race- or gender-conscious bid preference where it is demonstrated that the MBE or WBE's bid price is not attributable to the effects of past discrimination.

(B) In addition to the duties and powers given to the Director elsewhere, the Director shall have the following duties and powers:

1. Through appropriately promulgated procedures, certify businesses as bona fide MBEs/WBEs/LBEs. These procedures shall provide that any business seeking certification as a local business shall meet the definition of a LBE and possess or establish all of the following: (1) business cards for the San Francisco office; (2) business stationery for the San Francisco office; (3) written agreement for occupancy of the San Francisco office; (4) that the business is listed in an appropriate business buyers guide such as a telephone yellow pages listing San Francisco based businesses; (5) that business is transacted in the San Francisco office; (6) a conspicuously displayed business sign at the San Francisco business premises except where the business operates out of a residence; and (7) the office is appropriately equipped for the type of business for which certification as a LBE is sought.

Except where the Director cannot certify a business because the business has not been established in San Francisco for the requisite six months, whenever the Director denies an application for or revokes the certification of a business as a MBE, WBE, LBE because the business is not a bona fide MBE, WBE, LBE, the Director shall inform the aggrieved business in writing when the business will be eligible to reapply for certification. The Director shall require a business to wait at least six months but not more than two years after the denial or revocation before reapplying to the Director for certification as a MBE, WBE or LBE. Except as provided in Section 12D.14(C), the Director's denial or revocation of certification of a business as a MBE, WBE, LBE shall not be appealable to the Commission;

2. Annually, and more often if he deems necessary, analyze the most recently available data on "percent availability" of MBEs and WBEs in the various industries and professions identified in the utilization indices set forth in Appendix X to this ordinance and the Human Relations Commission's 1992 Sunset Report. Applying statistically sound methods of analysis, the Director shall identify areas of contracting where the City or its departments are failing to meet the participation goals to such an extent that an inference of discrimination can be made. In addition, the Director shall identify areas of contracting where the City is meeting and/or exceeding participation goals to such an extent that the MBE or WBE bid preferences can no longer be justified. The results of this study shall be included in the Commission's annual report required by Section 12D.15(C).

Not later than March 1st of each fiscal year, the Director shall transmit to the Board of Supervisors proposed amendments to this ordinance and the utilization indices necessitated by the data he has collected and analyzed;

3. By July 1st of each fiscal year subject to this ordinance, inform the Controller of the data each department is required to provide the Controller on each contract award. This data shall form the basis of the Commission's report to the Mayor and the Board of Supervisors and the public on the participation of MBEs and WBEs on City prime contracts subject to the ordinance;

4. Provide information and other assistance to MBEs and WBEs to increase their ability to compete effectively for the award of City contracts;

5. Assist the City to increase participation by MBEs and WBEs in City contracts;

6. Continue to develop and strengthen education and training programs for MBEs and WBEs and City contract awarding personnel;

7. Where after determining that a department, despite its good-faith efforts and application of the bid preference(s), has failed substantially to eliminate the exclusion of MBEs and/or WBEs from City contracting, the Director, after consulting with the department responsible for the project(s), may request the Contract Review Committee established in Section 12D.8.(A)(3) to review and approve the proposed project(s) for a set aside;

8. Work with the Controller and representatives of City departments to implement a City-wide prompt-payment policy requiring that MBEs, WBEs and LBEs be paid by the City within 60 days of the date on which the City receives an invoice from an MBE, WBE or LBE for work performed for the City.

(C) The requirements of this ordinance are separate from those imposed by the United States or the State of California as a condition of financial assistance or otherwise; however, the Director may authorize the substitution of such State or federal Minority Business Enterprise and Women Business Enterprise requirements for the requirements of this ordinance whenever such State or

federal requirements are substantially the same as those of this ordinance.

(D) The Director, with the approval of the Commission, may enter into cooperative agreements with agencies, public and private, concerned with increasing the utilization of MBEs and WBEs in government contracting, subject to the approval of the Board of Supervisors of the City and County of San Francisco. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 190-91, App. 5/31/91; Ord. 155-92, App. 5/29/92; Ord. 278-96, App. 7/3/96)

SEC. 12D.7. POWERS AND DUTIES OF THE CONTROLLER. (A) In addition to the duties given to the Controller elsewhere, the Controller shall work cooperatively with the Director to assemble and maintain the data the Director advises are necessary to form the basis of the Commission's report to the Mayor, Board of Supervisors and the public on the participation of MBEs and WBEs in City prime contracts.

(B) The Controller shall not certify the award of any contract subject to this ordinance until the department requesting certification of the award of the contract has provided the Controller with the information the Director advises is necessary under this ordinance.

(C) It is the City's policy that MBEs, WBEs and LBEs should be paid by the City within 30 days of the date on which the City receives an invoice from an MBE, WBE or LBE for work performed for the City. The Controller shall work with the Director and representatives of City departments to implement this City-wide prompt-payment policy. (Added by Ord. 175-89, App. 5/30/89;

amended by Ord. 155-92, 5/29/92; Ord. 398-95, App. 12/22/95; Ord. 278-96, App. 7/3/96)

SEC. 12D.8. POWERS AND DUTIES OF THE MAYOR, DEPARTMENTS OR CONTRACT AWARDING AUTHORITIES. (A) In addition to the duties given to the Mayor elsewhere, the Mayor shall:

1. By July 1st of each fiscal year subject to this ordinance, issue notices to all City departments informing them of their duties under this ordinance. The notice shall contain the following information: (1) the City-wide MBE/WBE participation goals that departments are expected to use good-faith efforts to attain during the fiscal year and that a department's failure to use good-faith efforts to attain the MBE/WBE participation goals shall be reported to the Board of Supervisors in the Commission's annual report; and (2) the data each department is required to provide the Controller on each contract award;

2. Coordinate and enforce cooperation and compliance by all departments with this ordinance;

3. Establish a three-member Contract Review Committee who shall have the authority to review contracts proposed by the Director or a department to be set aside, where competition for these contracts is limited to MBEs, WBEs and/or joint ventures with MBE/WBEs. The three-member Contract Review Committee shall be composed of the HRC Director, an individual appointed by the Board of Supervisors and an individual appointed by the Mayor. The Board and the Mayor shall appoint individuals who are knowledgeable about contracting practices

of the City and of the industry or profession affected by the set-aside of the contract;

4. Establish a three-member Subcontracting Goals Committee which shall have the authority to review decisions by the Director denying a contractor's request, pursuant to Section 12D.9(D)-(4) or 12D.11(A)-(6), to waive or reduce subcontractor participation goals. The three-member Subcontracting Goals Committee shall be composed of an individual appointed by the Commission, and individual appointed by the Board of Supervisors and an individual appointed by the Mayor. The Commission, the Board of Supervisors and the Mayor shall appoint individuals who are knowledgeable about the City's contracting and subcontracting practices and the relevant construction or professional service industry. The Commission, the Board of Supervisors, or the Mayor may not appoint to the Subcontracting Goals Committee the Director or any employee of the Human Rights Commission.

(B) Contract awarding authorities or in the case of a professional services contract, the department making the contract award recommendation, shall:

1. Use good-faith efforts to solicit and obtain quotes, bids or proposals from MBEs and WBEs on all solicitations, or document their unavailability;

2. Unless otherwise indicated in this ordinance and except where prohibited by State or Federal law or regulation, extend a preference in all bids and contracts and in the composition of rating scales as follows: (1) a five-percent preference to (i) a local business or (ii) a joint venture with local MBE or local WBE participation which

equals or exceeds 35 percent but is under 40 percent; or (iii) where a joint venture is composed of only local businesses with no local MBE or WBE participation or where the local MBE or local WBE participation is less than 35 percent; (2) a seven and one-half percent (7.5%) preference to (i) a joint venture with local MBE or WBE participation which equals or exceeds 40 percent but is less than 51 percent; (3) a 10-percent preference to (i) a local MBE or local WBE or (ii) a joint venture with local MBE or local WBE participation which equals or exceeds 51 percent.

A joint venture shall receive the aforementioned appropriate bid preference when the MBE or WBE is an active partner in the joint venture and performs work, manages the job and takes financial risks in proportion to the required level of participation stated in the bid documents and is responsible for a clearly defined portion of the work to be performed, and shares in the ownership, control, management responsibilities, risks, and profits of the joint venture. The portion of the MBE or WBE joint venturer's work shall be set forth in detail separately from the work to be performed by the nonMBE or non-WBE joint venture partner. The MBE or WBE joint venturer's portion of the contract must be assigned a commercially reasonable dollar value;

3. Arrange contracting by size and type of work to be performed so as most effectively to enhance the opportunity for participation by MBEs and WBEs to the maximum extent feasible. As soon as practical before soliciting quotes, bids or proposals, all contract awarding authorities or in the case of a professional services contract, the department making the contract award recommendation,

shall submit all large proposals to the Director for review. The purpose of the Director's review is to determine whether the proposed project can be divided into smaller projects so as to enhance the opportunity for participation by MBEs and WBEs in the project. For purposes of this subsection, the term "large project" shall mean the following: (1) any public works/construction project estimated to cost more than $5,000,000; (2) any professional services contract estimated to cost more than $50,000. If the Director determines, after consulting with the contract awarding authority or department responsible for the project, that the project can be divided into smaller projects, the contract awarding authority or department shall comply with the Director's determination and issue the solicitation for quotes, bids or proposals in accordance with the Director's determination;

4. Adjust bid bonding and insurance requirements as recommended by the City Risk Manager in his May 2, 1989 "Contract Insurance Manual";

5. Utilize a revolving fund as may be established by the City to assist MBEs and WBEs to meet bonding, insurance and other fee-related requirements;

6. Submit to a central office all current bids, requests for proposals, and solicitations with sufficient lead time to provide adequate notice and opportunity to MBEs and WBEs to participate;

7. Impose such sanctions or take such other actions as are designed to ensure compliance with the provisions of this ordinance, which shall include, but are not limited to:

(a) Refusal to grant the award of a contract;

(b) Order the suspension of a contract;

(c) Order the withholding of funds;

(d) Order the revision of a contract based upon a material breach of contract provisions pertaining to MBE or WBE participation;

(e) Disqualification of a bidder, contractor, subcontractor, or other business from eligibility for providing goods or services to the City for a period not to exceed five years, with a right to review and reconsideration by the Commission after two years upon a showing of corrective action indicating violations are not likely to recur;

8. Not award any contract to a person or business which is disqualified from doing business with the City under the provisions of this ordinance, nor shall any contract be awarded to any person or business which is disqualified from doing business with any governmental agency based on failure to comply with Minority or Women Business Enterprise or contract compliance requirements which are substantially the same as those of this ordinance;

9. Designate a staff person to be responsible for responding to the Director and Commission and to the requirements of this ordinance;

10. Maintain accurate records for each contract awarded, its dollar value, the nature of the goods or services to be provided, the name of the contractor awarded the contract, the efforts made by a construction,

architect/engineer contractor to solicit bids from and award subcontracts to MBEs and WBEs;

11. Where feasible, provide technical assistance to MBEs and WBEs to increase their ability to compete effectively for the award of City contracts;

12. Work with the Director and the Controller to implement a City-wide prompt-payment policy requiring that MBEs, WBEs and LBEs be paid by the City within 30 days of the date on which the City receives an invoice from an MBE, WBE or LBE for work performed for the City;

13. Provide the Director with written notice of all contract modifications which result in an increase or decrease of the contract's dollar amount of more than 10 percent. Such notice shall be provided within 30 days of each such contract modification.

(C) Subject to the prior approval of the Director, contract awarding authorities or departments may invite, encourage or request businesses to joint venture on any contract to promote MBE or WBE participation.

(D) For the purpose of determining Minority and Women Business Enterprise participation:

Contracts awarded to joint ventures in which one or more MBEs or WBEs are combined with one or more businesses which are not Minority or Women Business Enterprises shall be deemed to be awarded to Minority or Women Business Enterprises only to the extent of the Minority or Women Business Enterprises' participation in the joint venture.

(E) All contracts subject to this ordinance shall include the following requirements, in addition to such other requirements as may be set forth elsewhere:

1. Bidders and contractors on all contracts shall be required to sign before a notary an affidavit prepared by the City Attorney, declaring under penalty of perjury their intention fully to comply with the provisions of the ordinance;

2. Contracts shall incorporate this ordinance by reference and shall provide that the wilful failure of any bidder or contractor to comply with any of its requirements shall be deemed a material breach of contract;

3. Contracts shall provide that in the event that the Director finds that any bidder, subcontractor or contractor wilfully fails to comply with any of the provisions of this ordinance, rules and regulations implementing the ordinance or contract provisions pertaining to MBE or WBE participation the bidder, subcontractor or contractor shall be liable for liquidated damages for each contract in an amount equal to the bidder's or contractor's net profit on the contract, or 10 percent of the total amount of the contract or $1,000, whichever is greatest, said amount to be determined by the Director pursuant to Section 12D.14(C). All contracts shall also contain a provision in which the bidder, subcontractor or contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the bidder, subcontractor or contractor from any contract with the City;

4. Contracts shall require bidders, contractors and subcontractors to maintain records necessary for monitoring their compliance with this ordinance;

5. Contracts shall require that during the term of the contract, the prime contractor shall fulfill the MBE and WBE participation commitments submitted with their bid;

6. Contracts shall require prime contractors to include a contract provision in any subcontract with an MBE or WBE which provides MBE and WBE subcontractors with a remedy for a prime contractor's noncompliance with his or her commitment to utilize MBE and WBE subcontractors. This contractual provision shall include an agreement by the prime contractor to compensate any MBE or WBE subcontractor if the prime contractor does not fulfill its commitment to utilize the MBE or WBE subcontractor. This contractual provision shall also state that it is enforceable in a court of competent jurisdiction;

7. Whenever contract supplements, amendments or change orders are made which cumulatively increase the total dollar value of a construction contract by more than 10 percent, the contractor shall comply with those MBE and WBE provisions of this ordinance which applied to the original contract with respect to the supplement, amendment, or change order;

8. Contracts in which subcontracting is utilized shall prohibit back contracting to the prime contractor or lower-tier subcontracting for any purpose inconsistent

with the provisions of this ordinance, rules and regulations adopted pursuant to this ordinance, or contract provisions pertaining to MBE and WBE utilization.

(F) All contracts or other agreements between the City and County of San Francisco and persons or entities, public or private, where such persons or entities receive money from or through the City for the purpose of contracting with businesses to perform public improvements, shall require such persons or entities to comply with the provisions of this ordinance in awarding and administering such contracts, except where prohibited by State or Federal law or regulation.

(G) Where a department can demonstrate, despite its good-faith efforts and application of the bid preference(s), that it has failed substantially to eliminate the exclusion of MBEs or WBEs from City contracting, the department, after consulting with the Director, may request the Contract Review Committee established in Section 12D.8(A)(3) to review and approve the proposed project(s) selected by the department for a set-aside.

(H) City department heads and commissioners shall attend a one-hour mandatory training session on an annual basis. The training session shall be organized and conducted by the Director and shall inform City department heads and commissioners of the requirements of this ordinance. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 190-91, App. 5/31/91; Ord. 76-92, App. 3/13/92; Ord. 155-92, App. 5/29/92; Ord. 284-92, App. 9/16/92; Ord. 399-95, App. 12/22/95; Ord. 278-96, App. 7/3/96)

SEC. 12D.9. ADDITIONAL FINDINGS SUPPORTING RACE- AND GENDER-CONSCIOUS BID PREFERENCES AND SUBCONTRACTOR PARTICIPATION GOALS – PUBLIC WORKS/CONSTRUCTION; SUBCONTRACTING PROGRAM. (A) In addition to the General Findings set forth in Sections 12D.2 and 12D.2-1, and based upon the record before this Board, the Board hereby makes these additional findings in support of the race- and gender-conscious bid preference provisions and subcontractor participation goals for public works/construction contracts:

1. In Ordinance No. 139-84 this Board identified discriminatory procurement practices against MBEs and WBEs in the award of prime public works/construction contracts.

2. The evidence before this Board relating to the award of prime public works/construction contracts for fiscal year 1987-1988 reflects that MBEs (each ethnic group identified as a minority) and WBEs continue to be awarded contract dollars in amounts that are disproportionately lower than the available number of MBE and WBE prime public works/construction contractors willing and able to perform City construction work. The evidence before this Board relating to the participation of MBE/WBE prime and subcontractors on City construction contracts for fiscal year 1989-1990 reflects that MBEs (each ethnic group identified as a minority) and WBEs continue to be awarded contract dollars in amounts that are disproportionately lower than the available number of MBE and WBE prime and subcontractors willing and able to perform construction work. The statistical results are the same for MBEs for fiscal year 1990-91. These

results cannot be attributed to chance. In light of the testimony before this Board and the Commission in 1983, 1984, 1988, 1989 and 1992, and the Redevelopment Agency in 1991, this Board finds that these results can be attributed in part to discriminatory procurement practices and in part to discrimination in the local construction industry against MBEs and WBEs that is manifested in and perpetuated and exacerbated by the City's procurement practices.

3. The evidence before this Board supports the conclusion that MBEs and WBEs continue to be disadvantaged by discriminatory practices when competing for City prime construction contracts. The weight of the testimony and other evidence before this Board supports the conclusion that nonminority construction contractors competing for or doing business with the City and/or in the public sector limit the participation of MBE and WBE subcontractors on construction contracts by engaging in discriminatory business practices.

4. Race-neutral measures employed by the City in the past for those construction contracts subject to the "lowest, reliable, responsible bidder" standard did not prevent the discriminatory practices from occurring. Since February 1989 the City has pursued race-neutral measures to facilitate MBE/WBE subcontractor participation in construction contracts. From about February 1st to June 30, 1989 the City adopted a race-neutral disadvantaged business program for its construction contracts. Since July 1, 1989 the City has urged prime construction contractors to voluntarily extend subcontracting opportunities to MBE/WBE subcontractors on City construction contracts. These race- and gender-neutral measures

employed by the City have not been successful in increasing MBE/WBE subcontractor participation in City construction contracts.

5. The Board is granting a competitive advantage, the bid preference, to prime MBEs and WBEs to offset the identified competitive disadvantage caused by the City's discriminatory procurement practices.

6. The evidence before this Board relating to the award of prime public works/construction contracts for fiscal year 1990-1991 reflects that WBEs have improved their participation in City construction contracts. However, based on the testimony and other evidence before this Board, the Board concludes that remedial action continues to be necessary for WBEs competing for construction contracts to overcome past discrimination in the award of construction prime and sub-contracts. The Director shall closely monitor the participation of WBEs in construction contracts and report the results of such monitoring to the board pursuant to Section 12D.6(B)2.

(B) For all public works/construction contracts, the contract awarding authority shall furnish the Director with an informational copy of all bid conditions and requests for proposals, along with a statement identifying all funds provided by any other governmental agency which will be used in payment of the contract.

(C) Architect and engineer services provided to the City in connection with a public works/construction contract are governed by Section 12D.11.

(D) **MBE/WBE Subcontracting Program.** For all public works/construction contracts in which the contract awarding authority reasonably anticipates will include subcontractor participation, the contract awarding authority, prior to the solicitation of bids, shall provide the Director with a proposed job scope, and may submit written recommendations to the Director regarding MBE and WBE subcontractor participation goals to be set for the contract. The Director shall set the participation goals pursuant to Section 12D.9.(D)-(1).

(D)-(1) Upon receipt of a proposed job scope and/or a written recommendation from a contracting awarding authority pursuant to Section 12D.9.(D), the Director shall set the MBE and WBE participation goals for each construction contract based upon the following factors:

1. The extent of subcontracting opportunities presented by the contract:

2. The availability of MBE/WBE subcontractors capable of providing goods and services on the construction contract.

The Director shall set the MBE and WBE participation goals within 10 working days of the date the Director receives from a contract awarding authority a proposed job scope and/or written recommendation. If the Director fails to act within 10 days, and if the contract awarding authority submitted to the Director recommended goals pursuant to Section 12D.9.(D), the recommended goals shall be deemed approved by the Director, provided that the recommended goals are based upon the factors identified in Subsections (D)-(1) 1 and 2 above.

(D)-(2) Bid conditions shall require bidders on prime construction contracts to do the following:

1. Demonstrate in their bid that they have used good-faith efforts to utilize MBE and WBE subcontractors;

2. Identify the particular MBEs and WBEs subcontractors to be utilized in performing the contract, specifying for each the dollar value of the participation, the type of work to be performed and such information as may reasonably be required to determine the responsiveness of the bid.

Except as provided in Section 12D.9.(D)-(5), bids not meeting the requirements of Section 12D.9.(D)-(2) shall be declared non-responsive.

(D)-(3) A contract awarding authority may request that the Director waive or reduce the MBE and WBE subcontractor participation goals on construction contracts by submitting the reasons therefor in writing to the Director prior to the solicitation of bids.

(D)-(4) A bidder or contractor may request that the Director waive or reduce the amount of MBE or WBE subcontractor participation goals on a construction contract by submitting the reasons therefor in writing to the contract awarding authority with its bid.

(D)-(5) The Director may grant the request for waiver or reduction made pursuant to Sections 12D.9.(D)-(3) and (D)-(4) upon a determination that:

1. The reasonable and necessary requirements of the construction contract render subcontracting or the participation of businesses other than bidder unfeasible;

2. Qualified MBEs and/or WBEs capable of providing the goods or services required by the contract are unavailable, despite the prime contractor's or the department's good-faith efforts to locate MBEs and WBEs to meet the participation goals; or

3. The available MBEs and WBEs have given price quotes which are unreasonably high in that they exceed competitive levels beyond amounts which can be attributed to cover costs inflated by the present effects of discrimination.

(D)-(6) Whenever the Director denies a contractor's request to waive or reduce the participation goals, the contractor may appeal that denial to the Subcontracting Goals Committee established pursuant to Section 12D.8.(A)4. The Subcontracting Goals Committee's decision on the request shall be final. In reviewing the Director's denial of a contractor's request to waive or reduce participation goals, the Subcontracting Goals Committee shall consider the extent of subcontracting opportunities presented by the contract and the availability of MBE/WBE subcontractors capable of providing goods and services on the construction contract.

The Subcontracting Goals Committee may overrule the Director and grant the request for waiver or reduction only upon finding that:

1. The reasonable and necessary requirements of the construction contract render subcontracting or the participation of businesses other than bidder unfeasible;

2. Qualified MBEs and/or WBEs capable of providing the goods or services required by the contract are unavailable, despite the prime contractor's or the department's good-faith efforts to locate MBEs and WBEs to meet the participation goals; or

3. The available MBEs and WBEs have given price quotes which are unreasonably high in that they exceed competitive levels beyond amounts which can be attributed to cover costs inflated by the present effects of discrimination.

(D)-(7) Prior to entering into any prime construction contract, the contract awarding authority shall require bidders on the contracts to contact all MBEs and WBEs before the MBE/WBEs are listed as subcontractors in the bid.

(D)-(8) During the term of the contract, any failure to comply with the level of MBE and WBE subcontractor participation specified in the contract shall be deemed a material breach of contract. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 76-92, App. 3/13/92; Ord. 155-92, App. 5/29/92)

SEC. 12D.10. ADDITIONAL FINDINGS SUPPORTING RACE- AND GENDER-CONSCIOUS BID PREFERENCES – PURCHASING CONTRACTS. (A) In addition to the general findings set forth in Sections 12D.2 and 12D.2-1, and based upon the record before this Board, the Board hereby makes these additional findings in support of the race- and gender-conscious bid preferences for purchasing contracts:

1. In Ordinance No. 139-84 this Board identified discriminatory procurement practices in the award of purchasing contracts.

2. The evidence before this Board relating to the award of contracts for fiscal year 1987-1988 reflects that MBEs (each ethnic group listed as a minority) and WBEs continue to be awarded contract dollars in certain categories of purchasing contracts in dollar amounts that are disproportionately lower than the available number of MBEs and WBEs in the private sector. These results cannot be attributed to chance. In light of the testimony before this Board and the Commission in 1983, 1984, 1988 and 1989, this Board finds that these results can only be attributed to discriminatory procurement practices.

3. The evidence before this Board supports the conclusion that MBEs and WBEs continue to be disadvantaged by discriminatory practices when competing for the aforementioned purchasing contracts.

4. Race-neutral measures employed by the City in the past for those purchasing contracts subject to the "lowest, reliable, responsible bidder" standard did not prevent the discriminatory practices from occurring.

5. The Board is granting a competitive advantage, the bid preference, to MBEs and WBEs to offset the identified competitive disadvantage caused by the City's discriminatory procurement practices.

6. The evidence before this Board relating to the award of purchasing contracts for fiscal years 1989-1990 and 1990-1991 reflects that certain minority groups have improved their participation in City purchasing contracts.

However, based on the testimony and other evidence before this Board, the Board concludes that remedial action continues to be necessary to enable these groups to overcome past discrimination in the award of purchasing contracts. The Director shall closely monitor the participation of these groups in purchasing contracts and report the results of such monitoring to the Board pursuant to Section 12D.6(B)2.

(B) Equipment and supplies contracts or general services contracts as defined herein awarded by the purchaser shall be subject to the race- and gender-conscious bid preferences of this Ordinance.

(C) In addition to the duties given the purchaser elsewhere, the purchaser shall maintain, with the assistance of the Director, a current list of Minority and Woman Business Enterprises certified by the Commission to provide each of those commodities or services subject to this Ordinance which the purchaser indicates are required by the City. The purchaser shall notify the Director prior to solicitation of bids or quotations whenever no such certified businesses are available for a contract subject to the race- and gender-conscious bid preferences of this Ordinance, unless the Director waives such notification based on the known unavailability of such qualified businesses to perform a particular contract. The Director shall attempt to identify qualified businesses, and if successful, shall notify the purchaser of their availability; the purchaser shall provide such MBEs and WBEs every practical opportunity to submit bids or quotations.

(D) The purchaser shall also maintain a central office where all bids, requests for proposals and solicitations will be listed and kept current. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 155-92, 5/29/92)

SEC. 12D.11. ADDITIONAL FINDINGS SUPPORTING THE RACE- AND GENDER-CONSCIOUS BID PREFERENCES – CONSULTANTS AND PROFESSIONAL SERVICES. (A) In addition to the general findings set forth in Sections 12D.2 and 12D.2-1, and based upon the record before this Board, the Board hereby makes additional findings in support of the race- and gender-conscious bid preferences for the following specifically enumerated professional services contracts: Legal, architect and engineer, computer systems, management consulting, medical services.

1. In Ordinance No. 139-84 this Board identified discriminatory procurement practices against MBEs and WBEs in the award of prime professional services contracts.

2. The evidence before this Board relating to the award of prime legal services contracts for fiscal year 1987-1988 reflects that Black law firms continue to be awarded contract dollars in amounts that are disproportionately lower than the available numbers of Black law firms willing and able to perform legal services for the City. These results cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

The statistical evidence before this Board reflects that there are few Asian, Black, Latino and woman owned law firms certified by the Director to provide legal services to

the City. An April 1988 San Francisco Bar Association study concludes that there is significant disparity between equally qualified white and minority lawyers in terms of income, current employment positions, hiring, promotion and retention in San Francisco. The study also concludes that a high percentage of white and minority lawyers believe that racial discrimination plays a role in the employment practices of San Francisco legal employers. The report of the Judicial Council Advisory Committee on Gender Bias in the Courts on Civil Litigation and Courtroom Demeanor concludes, among other points, that opportunities for advancement and promotion in the legal profession appear less available to women than to men. In view of these studies, the Board finds that minority lawyers are excluded from employment opportunities due to discriminatory employment practices in San Francisco and that women lawyers are excluded from employment opportunities due to discriminatory practices in California. These employment practices prevent minority and women lawyers from gaining the necessary experience that would enable minority and women lawyers to compete for City legal services contracts. The City in its award of legal services contracts will become a passive participant in those practices.

The City is granting Asian, Black, Latino and woman owned law firms a bid preference pursuant to Section 12D.8.(B)2 to encourage majority law firms to joint venture with these minority and woman owned law firms when competing for the award of City contracts for legal services. Department shall also grant a seven and one-half percent (7.5%) bid/rating preference to any majority owned law firm based in San Francisco that enters into an

affirmative action program with the Director and agrees to take affirmative action to perform the following: (1) increase the recruitment, hiring, retention and advancement to partnership of minority lawyers within the firm; (2) have minority lawyers within the firm capable of providing the required services included among those who represent the City; (3) maintain and expand existing joint ventures or other formal associations with minority owned law firms, and retain and otherwise enter into joint ventures or other formal associations with minority owned law firms with which the firm does not currently have such a relationship, on legal matters of the law firm clientele calling for such a relationship; (4) request all law firms which serve as associate counsel, co-counsel or local counsel to the firm to adopt in principle these goals; (5) refer conflict of interest situations to minority owned law firms; and (6) take such additional steps as are practicable to foster and enhance relations between the majority firm and minority owned law firms, including but not limited to providing educational and training opportunities in furtherance of the objectives of this Ordinance as it relates to the legal profession. The affirmative action program developed pursuant to this subsection shall be effective for a period of 12 months after the date of agreement in writing by the law firm and the Director or the term of the legal services contract, whichever term is greater.

3. The evidence before this Board relating to the award of prime architect and engineering contracts for fiscal year 1987-1988 reflects that Black and woman owned architectural/engineering firms continue to be

awarded contract dollars in amounts that are disproportionately lower than the available numbers of Black and woman owned architectural/engineering firms willing and able to perform these services for the City. The evidence before this Board relating to the award of prime architect and engineering contracts for fiscal year 1989-1990 reflects that Asian owned architectural/engineering firms have been awarded contract dollars in amounts that are disproportionately lower than the available numbers of Asian owned architectural/engineering firms willing and able to perform these services for the City. Given that Asian owned architectural/engineering firms enjoy a relatively large share of this market, these statistically significant results cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

The evidence before this Board relating to the award of prime architect and engineering contracts for fiscal year 1989-90 reflects that Latino owned architectural/engineering firms have not been awarded any contract dollars notwithstanding the available numbers of Latino owned architectural/engineering firms willing and able to perform these services for the City. Based on the statistical and other evidence before this Board, the Board concludes that the lack of participation by Latino owned architectural and engineering firms on prime architectural/engineering contracts cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

4. The evidence before this Board relating to the award of prime computer systems services contracts for fiscal year 1987-1988 reflects that Asian, Black and

woman owned computer systems firms continue to be awarded contract dollars in amounts that are disproportionately lower than the available numbers of Asian, Black and woman owned computer systems firms willing and able to perform these services for the City. These results cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

5. The evidence before this Board relating to the award of prime management consulting services contracts for fiscal year 1987-1988 reflects that Asian, Black and woman owned management consulting firms continue to be awarded contract dollars in amounts that are disproportionately lower than the available numbers of Asian, Black and woman owned management consulting firms willing and able to perform these services for the City. These results cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

6. The evidence before this Board relating to the award of prime medical services contracts for fiscal year 1987-1988 reflects that Asian, Latino and woman owned medical services firms continue to be awarded contract dollars in amounts that are disproportionately lower than the available numbers of Asian, Latino and woman owned medical services firms willing and able to perform these services for the City. The evidence before this Board relating to the award of prime medical services contracts for fiscal year 1989-90 reflects that Black owned medical services firms are awarded contract dollars in amounts that are disproportionately lower than the available numbers of Black owned medical services firms willing

and able to perform these services for the City. These results cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

7. The evidence before this Board relating to the award of prime miscellaneous professional services contracts for fiscal year 1989-1990 reflects that Asian, Latino, Black and woman owned firms which provide miscellaneous professional services are awarded contract dollars in amounts that are disproportionately lower than the available numbers of Asian, Latino, Black and woman owned firms willing and able to perform these services for the City. These results cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

8. The evidence before this Board supports the conclusion that aforementioned MBEs and WBEs are disadvantaged by discriminatory practices when competing for City prime professional services contracts.

9. The Board is granting a competitive advantage, the bid preference, to the MBEs and WBEs identified as having been subject to the identified competitive disadvantage caused by the City's discriminatory procurement practices in the award of the aforementioned professional services contracts.

10. The evidence before this Board relating to the award of professional services contracts for fiscal year 1990-1991 reflects that certain minority groups have improved their participation in certain City professional services contracts. However, based on the testimony and other evidence before this Board, the Board concludes

that remedial action continues to be necessary to enable these groups to overcome past discrimination in the award of professional services contracts. The Director shall closely monitor the participation of these groups in professional services contracts and report the results of such monitoring to the Board pursuant to Section 12D.6(B)2.

(A)-(1) In addition to the general findings set forth in Section 12D.2 and the findings set forth in 12D.11(A)3, and based upon the record before this Board, the Board hereby makes these additional findings in support of establishing subcontractor participation goals for architectural/engineering contracts:

a. The evidence before this Board relating to the award of architectural and engineering prime contracts and subcontracts for fiscal years 1989-1991 shows that Black, Asian, Latino and woman owned architectural and engineering firms continue to be awarded contract dollars in amounts that are disproportionately lower than the available numbers of Black, Asian, Latino and woman owned architectural and engineering firms willing and able to perform these services for the City. These statistically significant disparities exist despite the fact that Black, Asian, Latino and woman owned firms are entitled to a bid preference on prime architectural and engineering contracts. In light of the testimony before this Board and the Commission in 1983, 1984, 1988, 1989, 1991 and 1992, the San Francisco Redevelopment Agency in 1991, and the San Francisco Unified School District in 1991 and 1992, this Board finds that these results can be attributed in part to discriminatory contracting practices and in part

to discrimination in the local architectural and engineering industries against MBE and WBE architects and engineers. This discrimination is manifested in, and perpetuated and exacerbated by, the City's contracting practices.

b. The evidence before this Board supports the conclusion that MBEs and WBEs continue to be disadvantaged by discriminatory practices when competing for City architectural and engineering contracts, and when competing to provide subcontractor services on City architectural and engineering contracts. The weight of the testimony and other evidence before this Board supports the conclusion that nonminority architects and engineers competing for or doing business with the City and/or in the private sector limit the participation of MBE and WBE subcontractors on architectural and engineering contracts by engaging in discriminatory business practices.

c. Race-neutral measures employed by the City in the past did not prevent the discriminatory practices from occurring. Since February 1989 the City has pursued race-neutral measures to facilitate MBE/WBE subcontractor participation in architectural and engineering contracts. From about February 1st to June 30, 1989 the City adopted a race-neutral disadvantaged business program for its architectural and engineering contracts. Since July 1, 1989 the City has urged prime architects and engineers to voluntarily extend subcontracting opportunities to MBE/WBE subcontractors on City architectural and engineering contracts. These race- and gender-neutral measures employed by the City have not been successful in increasing MBE/WBE participation in City architectural and engineering contracts.

(A)-(2) MBE/WBE Subcontracting Program. For all architectural and engineering contracts which the contract awarding authority reasonably anticipates will include subcontractor participation involving architectural/engineering and related services, the contract awarding authority, prior to requesting proposals, shall provide the Director with a proposed job scope, and may submit written recommendations to the Director regarding MBE and WBE subcontractor participation goals to be set for the contract. The Director shall set the participation goals pursuant to Section 12D.11(A)-(3).

(A)-(3) Upon receipt of a proposed job scope and/or a written recommendation from a contract awarding authority pursuant to Section 12D.11(A)-(2), the Director, shall set the MBE and WBE participation goals for each architectural and engineering contract based on the following factors:

1. The extent of subcontracting opportunities presented by the contract for architectural/engineering and related services;

2. The availability of MBE/WBE subcontractors capable of providing such services on the contract.

The Director shall set the MBE and WBE participation goals within 10 working days of the date the Director receives from a contract awarding authority a proposed job scope and/or written recommendation. If the Director fails to act within 10 days, and if the contract awarding authority submitted to the Director recommended goals pursuant to 12D.11(A)-(2), the recommended goals shall be deemed approved by the Director, provided that the

recommended goals are based upon the factors identified in this subsection.

(A)-(4) Requests for proposals shall require bidders on architectural and engineering contracts to do the following:

1. Demonstrate in their proposal that they have used good-faith efforts to utilize MBE and WBE subcontractors;

2. Identify the particular MBE and WBE subcontractors (which may include lower-tier MBE and WBE subcontractors) to be utilized in performing the contract, specifying for each the dollar value of participation, the type of work to be performed and such information as may reasonably be required to determine the responsiveness of the proposal.

Except as provided in Section 12D.11(A)-(7), proposals not meeting the requirements of Section 12D.11(A)-(4) shall be declared nonresponsive.

(A)-(5) A contract awarding authority may request that the Director waive or reduce the MBE and WBE subcontractor participation goals on architectural and engineering contracts by submitting the reasons therefor in writing to the Director prior to requesting proposals.

(A)-(6) A bidder may request that the Director waive or reduce the MBE and WBE subcontractor participation goals on an architectural or engineering contract by submitting the reasons therefor in writing to the contract awarding authority with its bid.

(A)-(7) The Director may grant the request for waiver or reduction made pursuant to Sections 12D.11(A)-(5) and (A)-(6) upon a determination that:

1. The reasonable and necessary requirements of the architectural or engineering contract render subcontracting or the participation of businesses other than the bidder unfeasible;

2. Qualified MBEs and/or WBEs capable of providing the services required by the contract are unavailable, despite the bidder's or the department's good-faith efforts to locate MBEs and WBEs to meet the participation goals; or

3. The available MBEs and WBEs have given price quotes which are unreasonably high in that they exceed competitive levels beyond amounts which can be attributed to cover costs inflated by the present effects of discrimination.

(A)-(8) Whenever the Director denies a bidder's request to waive or reduce the participation goals, the bidder may appeal that denial to the Subcontracting Goals Committee established pursuant to Section 12D.8(A)4. The Subcontracting Goals Committee's decision on the request shall be final. In reviewing the Director's denial of a bidder's request to waive or reduce participation goals, the Subcontracting Goals Committee shall consider the extent of subcontracting opportunities presented by the contract and the availability of MBE/WBE subcontractors capable of providing services on the contract.

The Subcontracting Goals Committee may overrule the Director and grant the request for waiver or reduction only upon finding that:

1. The reasonable and necessary requirements of the contract render subcontracting or the participation of businesses other than bidder unfeasible;

2. Qualified MBEs and/or WBEs capable of providing the services required by the contract are unavailable, despite the bidder's or the department's good-faith efforts to locate MBEs and WBEs to meet the participation goals; or

3. The available MBEs and WBEs have given price quotes which are unreasonably high in that they exceed competitive levels beyond amounts which can be attributed to cover costs inflated by the present effects of discrimination.

(A)-(9) The contract awarding authority shall require bidders on architectural and engineering contracts to contact all MBEs and WBEs listed as subcontractors in proposals before listing such MBEs and WBEs.

(A)-(10) During the term of the contract, any failure to comply with the level of MBE and WBE subcontractor participation specified in the contract shall be deemed a material breach of contract.

(A)-(11) In implementing this subcontracting program, the Director may encourage contract awarding authorities and prime contractors to take into consideration when recruiting subcontractors the degree of underutilization of MBEs and WBEs within the specific industries or subindustries called for by the contract.

(B) For all professional services contracts as defined herein, the contract awarding authority or the department making the contract award recommendation shall furnish the Director with an informational copy of all bid conditions and requests for proposals, if any, along with a statement identifying all funds provided by any other governmental agency which will be used in payment of the contract. Prior to solicitation of bids or proposals, the Director may make recommendations to the contract awarding authority with respect to provisions pertaining to MBE and WBE participation.

(C) Professional services contracts, the estimated cost of which exceeds $10,000, shall be awarded and administered in accordance with the following standards and procedures:

1. The contract awarding authority or the department making the contract award recommendation shall use good-faith efforts to solicit bids or proposals from MBEs and WBEs certified to provide the specified services. MBEs and WBEs shall be provided every practical opportunity to submit bids or proposals;

2. City departments shall include amongst consultant selection panelists individuals who are women and minorities;

3. All consultant selection panels and awarding officers shall apply the bid/rating preferences to each stage of the selection process, e.g., qualifications, proposals and interviews. Each evaluator shall score each consultant on a point system based on a predetermined evaluation criteria and predetermined point value. The selection criteria shall be based solely on objective factors that are

related to the ability of the contractor to perform the proposed project. The bid/rating preference shall be applied to the score attained by the MBE, WBE, and/or LBE as set forth in this Ordinance. If the highest score is attained by a MBE or WBE, the department shall enter into good-faith negotiations with that consultant. Subject to the prior approval of the Director and upon a showing that those negotiations were undertaken in good faith with the aforementioned MBE or WBE consultant, a department may award the contract to another competing consultant.

4. The Director is empowered to take actions as are designed to ensure compliance with the provisions of this Section, which shall include, but are not limited to:

(a) Order the suspension of the selection process;

(b) Intervene in the selection process to correct contracting practices which hinder equal business opportunities for MBEs and WBEs. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 190-91, App. 5/31/91; Ord. 344-91, App. 9/19/91; Ord. 155-92, App. 5/29/92; Ord. 284-92, App. 9/16/92)

SEC. 12D.12. GOOD-FAITH EFFORTS REQUIRED FOR OTHER CONTRACTS. (A) All City and County departments, commissions, boards, officers and employees, in the deposit of City funds and performance of their other official duties, and in the award of leases, franchises, concessions, and contracts not subject to the race- and gender-conscious bid preferences of this Ordinance shall make every good-faith effort to use the services of Minority Business Enterprises and Women Business Enterprises. Such services shall include, but are

not limited to, the financial services of banks, savings and loan companies and other commercial financial institutions, arrangement of travel and accommodations when traveling on official City business and such other services needed by City departments. Commissions and boards shall submit to the Director on an annual basis a written report on the efforts made pursuant to this Subsection.

(B) The City Treasurer, the Controller, the Health Service System and the Retirement Board shall report annually to the Director, with copies to the Mayor and the Board of Supervisors, their utilization of MBEs and WBEs. (Added by Ord. 175-89, App. 5/30/89; Ord. 278-96, App. 7/3/96)

SEC. 12D.13. EXCEPTIONS AND WAIVERS. (A) The Director shall waive the race- and gender-conscious bid preferences and good-faith efforts requirements of this ordinance under the following circumstances:

1. Whenever the Director finds, with the advice of the contract awarding authority, that needed goods or services are available only from a sole source and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on a failure to comply with Minority or Women Business Enterprise or contract compliance requirements;

2. If the contract awarding authority certifies in writing to the Director that: (1) pursuant to Administrative Code Section 6.30 the contract is necessary to respond to an emergency which endangers the public health or safety and (2) there is no time to apply the bid

preference(s) and no MBEs or WBEs capable of performing the emergency work are immediately available; provided that such certification shall be made prior to the Controller's contract certification.

(B) The Director shall waive the five-percent LBE bid preference for contracts in excess of $5,000,000 whenever a contract awarding authority establishes that: (1) sufficient qualified Local Business Enterprises capable of providing the needed goods and services required by the contract are unavailable and (2) sufficient qualified businesses located outside of San Francisco capable of providing the needed goods and services required by the contract are available; or (3) the application of the five-percent LBE preference will result in significant additional costs to the City if the waiver of the bid preference is not granted.

(C) Pursuant to Administrative Code Section 6.29-2, the bid preference provisions of this ordinance are not applicable to any contract for the construction, reconstruction or repair of public buildings, streets, utilities or other public work or improvement estimated to cost in excess of $10,000,000.

(D) Pursuant to Administrative Code Section 21.11-2, the bid preference provisions of this ordinance are not applicable to any contract for the purchase of materials, supplies or equipment estimated to cost in excess of $10,000,000. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 190-91, App. 5/31/91)

SEC. 12D.14. MONITORING AND COMPLIANCE. (A) The Director shall monitor the City's progress toward achievement of the goals stated in Section 12D.3

(declaration of policy). The Director shall issue an exit report for any contract which includes MBE/WBE prime contractor participation as a joint venture partner. The purpose of the exit report is to ensure that MBE/WBEs are actually performing services on joint ventures.

(B) **Noncompliance By Contractors.** In cases where the Director has cause to believe that a contractor acting in good faith has failed to comply with any of the requirements of this ordinance, rules and regulations adopted pursuant to this ordinance, or contract provisions pertaining to MBE or WBE participation, the Director shall notify the contract awarding authority and shall attempt to resolve the noncompliance through conciliation. If the noncompliance cannot be resolved, the Director shall submit to the Commission and the contractor a written Finding of Noncompliance. The Human Rights Commission shall give the contractor an opportunity to appeal the Finding, and if the Commission concurs with the finding of the Director, it shall take such action as will effectuate the purposes of this ordinance.

(C) **Wilful or Bad Faith Noncompliance by Contractors.** In cases where the Director has cause to believe that any bidder or contractor has wilfully failed to comply with any of the provisions of this ordinance, rules and regulations adopted pursuant to this ordinance, or contract provisions pertaining to MBE or WBE participation, the Director shall be empowered to conduct an investigation and after affording the contractor notice and an opportunity to be heard, may impose sanctions for each violation of this subsection. Such sanctions shall include but are not limited to:

(a) Declare the bidder or contractor nonresponsive and ineligible to receive the award of the contract;

(b) Declare the bidder or contractor an irresponsible bidder and disqualify the bidder or contractor from eligibility for providing goods or services to the City and County for a period of five years, with a right of review and reconsideration by the Commission after two years upon a showing of corrective action indicating violations are not likely to reoccur;

(c) If the bidder or contractor is a MBE, WBE and/or LBE, revoke that business' certification as a MBE, WBE and/or LBE;

(d) Determine that the bidder or contractor has wilfully failed to comply with the provisions of this ordinance and pursuant to the provision in the contract contemplated by Section 12D.8(E)3 of the ordinance, calculate the liquidated damages for which the bidder or contractor shall be liable.

Thereafter the Director shall send a written notice to the Controller, the Mayor and to all contract awarding authorities or City department officials overseeing any contract with the bidder or contractor that a determination of a bad-faith compliance has been made and that all payments due the bidder or contractor shall be withheld as agreed to by the bidder or contractor and the City pursuant to Section 12D.8(E)3.

In addition, the Director shall transmit to the Bureau of Delinquent Revenues a report of the determination of liability and ask the Bureau of Delinquent Revenues to

coordinate efforts with the Controller and other applicable City departments to ensure that the liquidated damages are paid to the City.

The bidder or contractor may appeal the Director's decision to the Human Rights Commission, which may sustain, reverse or modify the Director's findings and sanctions imposed or take such other action as will effectuate the purposes of this ordinance.

An appeal by a contractor under this subsection shall not stay the Director's findings.

(D) The Director may require such reports, information and documentation from contractors, bidders, contract awarding authorities and the head of any department, division, or office of the City as are reasonably necessary to determine compliance with the requirements of this ordinance.

(E) **Noncompliance by City Departments.** Whenever the Director finds after investigation that a contract awarding authority has willfully failed to comply with the provisions of this ordinance, a written Finding of Noncompliance specifying the nature of the noncompliance shall be transmitted to the contract awarding authority, the Commission, the Mayor and Board of Supervisors; and

The Director shall attempt to resolve any noncompliance through conference and conciliation. Should such attempt fail to resolve the noncompliance, the Director shall transmit a copy of the Finding of Noncompliance along with a finding that conciliation was attempted and failed to the Commission which shall notify the contract

awarding agency to take appropriate action to secure compliance.

The Finding of Noncompliance shall be communicated to the Mayor and the Board of Supervisors.

(F) If the Director has reason to believe that any person has knowingly made, filed, or caused to be filed with the City any materially false or misleading statement or report made in connection with this ordinance, the Director shall report that information to the City Attorney or the District Attorney for appropriate action. The Director shall be empowered to conduct an investigation and for each violation of this subsection, 12D.14(F), to impose sanctions as set forth in Section 12D.14(C). (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 278-96, App. 7/3/96)

SEC. 12D.15. REPORTING AND REVIEW; EXTENSION. (A) **Reporting by Departments.** By December 31st of each fiscal year all contract awarding authorities and departments shall report annually to the Mayor on their progress in the preceding fiscal year toward achievement of the MBE and WBE participation goals.

(B) **Reporting by the Director.**

1. The Director shall report quarterly to the Commission and the Board of Supervisors whether the goals stated in Section 12D.3 have been met in whole or in part.

2. The Director shall report to the Commission all waivers acted upon pursuant to Section 12D.13. Such report shall be made at the first Commission meeting following the granting of the waiver.

(C) **Reporting by the Commission.** By March 1st of each fiscal year subject to this ordinance, the Commission shall submit an annual report to the Mayor and the Board of Supervisors on the progress of the City toward the goals stated in Section 12D.3 of this ordinance, together with an identification of problems and specific recommendations for: (1) discontinuing the race- or gender-conscious bid preferences in those cases where the bid preferences have remedied the identified discrimination against MBEs and WBEs; and (2) improving the City's performance in remedying the identified discrimination against MBEs and WBEs.

(D) The Board of Supervisors shall act upon the Commission's recommendations by the third Board meeting of May in each fiscal year subject to this ordinance.

(E) **Review by the Commission.** This ordinance shall expire June 30, 1997 unless the Commission, after conducting public hearings, finds that the purposes identified in Section 12D.3 have not yet been achieved, in which case it shall certify said finding to the Board of Supervisors no later than 120 days prior to the expiration date. Thereafter the Board of Supervisors may extend the ordinance for additional three-year periods.

(F) **Review by the Contract Review Committee.** The Contract Review Committee established pursuant to Section 12D.8(A)3 shall have the following powers and duties:

1. To review contracts referred to it by the Director or a department for determining whether the contract should be set aside, where competition for the contract is

limited to MBEs, WBEs and/or joint ventures with MBE/WBEs;

2. Before approving a set aside of a contract, the Contract Review Committee shall first determine that: (1) the department seeking or affected by the set-aside has complied with all of the requirements of Section 12D.8(B); and (2) there are at least three business enterprises which are certified or eligible for certification as a MBE or WBE which can compete for the contract set aside.

3. After making the findings required by Section 12D.15(F)2, the Contract Review Committee may approve that a contract be set aside. However, the Contract Review Committee shall first consider the feasibility of approving a set-aside where competition is limited to joint ventures with MBE and/or WBE participation which equals or exceeds 35 percent. The Contract Review Committee shall issue its findings and approval in writing to the department affected by the set-aside.

(G) **Extension.** Pursuant to Section 12D.15(E) of Ordinance 175-89, as amended, and based upon the Additional Findings set forth in Section 12D.2-1, the Board hereby extends Ordinance 175-89, as amended, to June 30, 1997. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 190-91, App. 5/31/91; Ord. 155-92, App. 5/29/92; Ord. 278-96, App. 7/3/96)

SEC. 12D.16. CLERK OF BOARD TO TRANSMIT COPIES OF THIS CHAPTER; INFORMING CITY EMPLOYEES. The Clerk of the Board of Supervisors shall send copies of this Chapter, as amended, to every department, agency, commission and contract awarding authority in the City and County of San Francisco. Each

appointing officer of the City shall inform all employees under his or her jurisdiction of the provisions of this ordinance and of the duty of all of his or her employees to comply with the provisions of this ordinance. Each appointing officer shall also inform employees that if the employee fails to comply with the requirements of this ordinance the employee shall be subject to appropriate disciplinary action.

The Clerk of the Board of Supervisors shall also inform every department, agency, commission and contract awarding authority that whenever in accordance with the provisions of the Charter or of the Administrative Code a proposed ordinance, resolution, contract, lease, franchise, license, or other agreement or transaction is submitted to this Board for its adoption or approval, it shall be the policy of this Board to adopt legislation or approve those agreements or transactions where the department first has demonstrated in writing to this Board that the department has engaged in good-faith efforts to include the participation of MBEs and WBEs in the department's procurement and contract award practices. (Added by Ord. 190-91, App. 5/31/91)

SEC. 12D.17. IMPLEMENTING REGULATIONS. Not later than 30 days after the enactment of this ordinance, the Commission shall adopt amendments to the rules, regulations and procedures it adopted and publicly promulgated pursuant to Ordinance 175-89. The Commission shall afford the public and City departments the opportunity to provide input to and comment on the amendments to the regulations prior to their formal adoption. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 190-91, App. 5/31/91)

SEC. 12D.18. SEVERABILITY. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 190-91, App. 5/31/91)

SEC. 12D.19. EFFECTIVE DATE. This ordinance shall take effect on July 1, 1992, and shall govern all contracts for which a bid has not been solicited by the effective date. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 190-91, App. 5/31/91; Ord. 76-92, App. 3/13/92; Ord. 155-92, App. 5/29/92))

APPENDIX B

Amendment of Whole

May 8, 1997.

FILE NO 284-97-1 **ORDINANCE NO 210-97**

(Minority/Women/Local Business Utilization Ordinance III) AMENDING THE SAN FRANCISCO ADMINISTRATIVE CODE BY ADDING SECTION 12D.2-2 THERETO AND BY AMENDING SECTIONS 12D.9(A), 12D.10(A), 12D.11(A), 12D.11(A)-(1) AND 12D.15(G) THEREOF TO SET FORTH FINDINGS SUPPORTING SIX MONTH EXTENSION OF MBE/WBE/LBE ORDINANCE – III AND PROVIDING FOR THE SIX MONTH EXTENSION.

Note: Additions are underlined. Deletions are indicated by ((double parentheses))

Be it ordained by the People of the City and County of San Francisco:

Section 1. The San Francisco Administrative Code is hereby amended by adding Section 12D.2-2 thereto to read as follows:

SECTION 12D.2-2. FURTHER ADDITIONAL FINDINGS SUPPORTING SIX MONTH EXTENSION OF MBE/WBE/LBE ORDINANCE – III

Upon the expiration of Ordinance No. 175-89 this Board having adopted Ordinance No. 155-92 to address the practices and to offset the economic disadvantages identified in Sections 12D.2, 12D.9(A), 12D.10(A), 12D.11(A) and 12D.11(A)-(1);

And Ordinance No. 155-92 being remedial in nature will expire June 30, 1997 and thus required the Human

Rights Commission to study minority and woman owned business participation in City contracting prior to the expiration of Ordinance No. 155-92;

And the Human Rights Commission pursuant to Section 12D.15(E) of Ordinance No. 155-92, through its MBE/WBE/LBE Community Advisory Committee and at its regular and special meetings, having received public testimony concerning the City's compliance with Ordinance No. 155-92;

And the Human Rights Commission on January 13, 1997 having hired Mason Tillman Associates to conduct a Disparity Study which will be concluded on or before August 31, 1997;

And the Human Rights Commission, pursuant to Section 12D.15(E) of Ordinance No. 155-92 having conducted public hearings on January 29, 1997, February 19, 1997 and February 27, 1997;

And the Human Rights Commission having received from Mason Tillman Associates a statistical analysis of the MBE/WBE/LBE Progress Reports for fiscal years 1992-93, 1993-94 and 1994-95 suggesting continuing patterns of underutilization of certified MBE and WBE contractors;

And the Human Rights Commission having submitted to this Board its March 3, 1997 "Resolution Certifying HRC Findings to the Board of Supervisors Supporting the Extension of the MBE/WBE/LBE Ordinance" as well as supporting data and analyses;

And the Human Rights Commission having resolved to transmit to this Board by August 31, 1997, the completed disparity study which will assist this Board in determining whether the purposes identified in Section 12D.3 have been achieved;

And this Board incorporating by reference the findings set forth in Sections 12D.2 and 12D.2-1 above;

And this Board, having reviewed the MBE/WBE/LBE Progress Reports for fiscal years 1992-93, 1993-94, and 1994-95 and other supporting data (all of which shall be incorporated by reference) and having conducted public hearings on April 24, 1997 on the MBE/WBE program and policies and on May 8, 1997 at which the Board received additional testimony and written submittals from the public (which shall be incorporated by reference), finds that there is a good faith basis for concluding that the purposes identified in Section 12D.3 have not yet been achieved;

This Board hereby finds that there is a good faith basis to extend Ordinance 155 - 92, as amended, for a six month period during which time this Board, with the assistance of the Human Rights Commission and the City Attorney, will continue with the process of fact finding to ascertain whether a strong basis in evidence exists for concluding that the purposes identified in Section 12D.3 have not been achieved.

Section 2. The San Francisco Administrative Code is hereby amended by amending Sections 12D.9(A), 12D.10(A), 12D.11(A), 12D.11(A)-(1), and 12D.15(G) thereof to read as follows:

SEC. 12D.9. ADDITIONAL FINDINGS SUPPORTING RACE- AND GENDER-CONSCIOUS BID PREFERENCES AND SUBCONTRACTOR PARTICIPATION GOALS – PUBLIC WORKS/CONSTRUCTION; SUBCONTRACTING PROGRAM. (A) In addition to the General Findings set forth in Section 12D.2, ((and)) 12D.2.1, and 12D.2-2 and based upon the record before this Board, the Board hereby makes these additional findings in support of the race- and gender-conscious bid preference provisions and subcontractor participation goals for public works/construction contracts:

1. In Ordinance No. 139-84 this Board identified discriminatory procurement practices against MBEs and WBEs in the award of prime public works/construction contracts.

2. The evidence before this Board relating to the award of prime public works/construction contracts for fiscal year 1987-1988 reflects that MBEs (each ethnic group identified as a minority) and WBEs continue to be awarded contract dollars in amounts that are disproportionately lower than the available number of MBE and WBE prime public works/construction contractors willing and able to perform City construction work. The evidence before this Board relating to the participation of MBE/WBE prime and subcontractors on City construction contracts for fiscal year 1989-1990 reflects that MBEs (each ethnic group identified as a minority) and WBEs continue to be awarded contract dollars in amounts that are disproportionately lower than the available number of MBE and WBE prime and subcontractors willing and able to perform construction work. The statistical results are the same for MBEs for fiscal year 1990-91. These

results cannot be attributed to chance. In light of the testimony before this Board and the Commission in 1983, 1984, 1988, 1989 and 1992, and the Redevelopment Agency in 1991, this Board finds that these results can be attributed in part to discriminatory procurement practices and in part to discrimination in the local construction industry against MBEs and WBEs that is manifested in and perpetuated and exacerbated by the City's procurement practices.

3. The evidence before this Board supports the conclusion that MBEs and WBEs continue to be disadvantaged by discriminatory practices when competing for City prime construction contracts. The weight of the testimony and other evidence before this Board supports the conclusion that nonminority construction contractors competing for or doing business with the City and/or in the public sector limit the participation of MBE and WBE subcontractors on construction contracts by engaging in discriminatory business practices.

4. Race-neutral measures employed by the City in the past for those construction contracts subject to the "lowest, reliable, responsible bidder" standard did not prevent the discriminatory practices from occurring. Since February 1989 the City has pursued race-neutral measures to facilitate MBE/WBE subcontractor participation in construction contracts. From about February 1st to June 30, 1989 the City adopted a race-neutral disadvantaged business program for its construction contracts. Since July 1, 1989 the City has urged prime construction contractors to voluntarily extend subcontracting opportunities to MBE/WBE subcontractors on City construction contracts. These race- and gender-neutral measures

employed by the City have not been successful in increasing MBE/WBE subcontractor participation in City construction contracts.

5. The Board is granting a competitive advantage, the bid preference, to prime MBEs and WBEs to offset the identified competitive disadvantage caused by the City's discriminatory procurement practices.

6. The evidence before this Board relating to the award of prime public works/construction contracts for fiscal year 1990-1991 reflects that WBEs have improved their participation in City construction contracts. However, based on the testimony and other evidence before this Board, the Board concludes that remedial action continues to be necessary for WBEs competing for construction contracts to overcome past discrimination in the award of construction prime and sub-contracts. The Director shall closely monitor the participation of WBEs in construction contracts and report the results of such monitoring to the board pursuant to Section 12D.6(B)2.

SEC. 12D.10. ADDITIONAL FINDINGS SUPPORTING RACE- AND GENDER-CONSCIOUS BID PREFERENCES – PURCHASING CONTRACTS. (A) In addition to the general findings set forth in Sections 12D.2, ((and)) 12D.2-1 and 12D.2-2, and based upon the record before this Board, the Board hereby makes these additional findings in support of the race- and gender-conscious bid preferences for purchasing contracts:

1. In Ordinance No. 139-84 this Board identified discriminatory procurement practices in the award of purchasing contracts.

2. The evidence before this board relating to the award of contracts for fiscal year 1987-1988 reflects that MBEs (each ethnic group listed as a minority) and WBEs continue to be awarded contract dollars in certain categories of purchasing contracts in dollar amounts that are disproportionately lower than the available number of MBEs and WBEs in the private sector. These results cannot be attributed to chance. In light of the testimony before this Board and the Commission in 1983, 1984, 1988 and 1989, this Board finds that these results can only be attributed to discriminatory procurement practices.



3. The evidence before this Board supports the conclusion that MBEs and WBEs continue to be disadvantaged by discriminatory practices when competing for the aforementioned purchasing contracts.

4. Race-neutral measures employed by the City in the past for those purchasing contracts subject to the "lowest, reliable, responsible bidder" standard did not prevent the discriminatory practices from occurring.

5. The Board is granting a competitive advantage, the bid preference, to MBEs and WBEs to offset the identified competitive disadvantage caused by the City's discriminatory procurement practices.

6. The evidence before this Board relating to the award of purchasing contracts for fiscal years 1989-1990 and 1990 and 1991 reflects that certain minority groups have improved their participation in City purchasing contracts. However, based on the testimony and other evidence before this Board, the Board concludes that remedial action continues to be necessary to enable these groups to overcome past discrimination in the award of

purchasing contracts. The Directors shall closely monitor the participation of these groups in purchasing contracts and report the results of such monitoring to the Board pursuant to Section 12D.6(B)(2).

SEC. 12D.11. ADDITIONAL FINDINGS SUPPORTING THE RACE AND GENDER CONSCIOUS BID PREFERENCES - CONSULTANTS AND PROFESSIONAL SERVICES. (A) In addition to the general findings set forth in Sections 12D.2, ((and)) 12D.2-1 and 12D.2-2, and based upon the record before this Board, the Board hereby makes additional findings in support of the race- and gender-conscious bid preferences for the following specifically enumerated professional services contracts: Legal, architect and engineer, computer systems, management consultant, medical services.

1. In Ordinance No. 139-84 this Board identified discriminatory procurement practices against MBEs and WBEs in the award of prime professional services contracts.

2. The evidence before this Board relating to the award of prime legal services contracts for fiscal year 1987-1988 reflects that Black law firms continue to be awarded contract dollars in amounts that are disproportionately lower than the available numbers of Black law firms willing and able to perform legal services for the City. These results cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

The statistical evidence before this Board reflects that there are few Asian, Black, Latino and woman owned law firms certified by the Director to provide legal services to

the City. An April 1988 San Francisco Bar Association study concludes that there is significant disparity between equally qualified white and minority lawyers in terms of income, current employment positions, hiring, promotion and retention in San Francisco. The study also concludes that a high percentage of white and minority lawyers believe that racial discrimination plays a role in the employment practices of San Francisco legal employers. The report of the Judicial Council Advisory Committee on Gender Bias in the Courts on Civil Litigation and Courtroom Demeanor concludes, among other points, that opportunities for advancement and promotion in the legal profession appear less available to women than to me. In view of these studies, the Board finds that minority lawyers are excluded from employment opportunities due to discriminatory employment practices in San Francisco and that women lawyers are excluded from employment opportunities due to discriminatory practices in California. These employment practices prevent minority and women lawyers from gaining the necessary experience that would enable minority and women lawyers to compete for City legal services contracts. The City in its award of legal services contracts will become a passive participant in those practices.

The City is granting Asian, Black, Latino and woman owned law firms a bid preference pursuant to Section 12D.8(B)2 to encourage majority law firms to joint venture with these minority and woman owned law firms when competing for the award of City contracts for legal services. Departments shall also grant a seven and one-half percent (7.5%) bid/rating preference to any majority owned law firm based in San Francisco that enters into an

affirmative action program with the Director and agrees to take affirmative action to perform the following: (1) increase the recruitment, hiring, retention and advancement to partnership of minority lawyers within the firm; (2) have minority lawyers within the firm capable of providing the required services included among those who represent the City; (3) maintain and expand existing joint ventures or other formal associations with minority owned law firms, and retain and otherwise enter into joint ventures or other associations with minority owned law firms with which the firm does not currently have such a relationship, on legal matters of the law firm clientele calling for such a relationship; (4) request all law firms which serve as associate counsel, co-counsel or local counsel to the firm to adopt in principle these goals; (5) refer conflict of interest situations to minority owned law firms; and (6) take such additional steps as are practicable to foster and enhance relations between the majority firm and minority owned law firms, including but not limited to providing educational and training opportunities in furtherance of the objectives of this Ordinance as it relates to the legal profession. The affirmative action program developed pursuant to this subsection shall be effective for a period of 12 months after the date of agreement in writing by the law firm and the Director or the term of the legal services contract, whichever term is greater.

3. The evidence before this Board relating to the award of prime architect and engineering contracts for fiscal year 1987-1988 reflects that Black and woman owned architectural/engineering firms continue to be

awarded contract dollars in amounts that are disproportionately lower than the available numbers of Black and woman owned architectural/engineering firms willing and able to perform these services for the City. The evidence before this Board relating to the award of prime architect and engineering contracts for fiscal year 1989-1990 reflects that Asian owned architectural/engineering firms have been awarded contract dollars in amounts that are disproportionately lower than the available numbers of Asian owned architectural/engineering firms willing and able to perform these services for the City. Given that Asian owned architectural/engineering enjoy a relatively large share of this market, these statistically significant results cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

The evidence before this Board relating to the award of prime architect and engineering contracts for fiscal year 1989-90 reflects that Latino owned architectural/engineering firms have not been awarded any contract dollars notwithstanding the available numbers of Latino owned architectural/engineering firms willing and able to perform these services for the City. Based on the statistical and other evidence before this Board, the Board concludes that the lack of participation by Latino owned architectural and engineering firms on prime architectural/engineering contracts cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

4. The evidence before this Board relating to the award of prime computer systems services contracts for fiscal year 1987-1988 reflects that Asian, Black and

woman owned computer systems firms continue to be awarded contract dollars in amounts that are disproportionately lower than the available numbers of Asian, Black and woman owned computer systems firms willing and able to perform these services for the City. These results cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

5. The evidence before this Board relating to the award of prime management consulting services contracts for fiscal year 1987-1988 reflects that Asian, Black and woman owned management consulting firms continue to be awarded contract dollars in amounts that are disproportionately lower than the available numbers of Asian, Black and woman owned management consulting firms willing and able to perform these services for the City. These results cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

6. The evidence before this Board relating to the award of prime medical services contracts for fiscal year 1987-1988 reflects that Asian, Latino and woman owned medical services firms continue to be awarded contract dollars in amounts that are disproportionately lower than the available numbers of Asian, Latino and woman owned medical services firms willing and able to perform these services for the City. The evidence before this Board relating to the award of prime medical services contracts for fiscal year 1989-90 reflects that Black owned medical services firms are awarded contract dollars in amounts that are disproportionately lower than the available numbers of Black owned medical services firms willing

and able to perform these services for the City. These results cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

7. The evidence before this Board relating to the award of prime miscellaneous professional services contracts for fiscal year 1989-1990 reflects that Asian, Latino, Black and woman owned firms which provide miscellaneous professional services are awarded contract dollars in amounts that are disproportionately lower than the available numbers of Asian, Latino, Black and woman owned firms willing and able to perform these services for the City. These results cannot be attributed to chance. The Board finds that these results can only be attributed to discriminatory procurement practices.

8. The evidence before this Board supports the conclusion that aforementioned MBEs and WBEs are disadvantaged by discriminatory practices when competing for City prime professional services contracts.

9. The Board is granting a competitive advantage, the bid preference, to the MBEs and WBEs identified as having been subject to the identified competitive disadvantage caused by the City's discriminatory procurement practices in the award of the aforementioned professional services contract.

10. The evidence before this Board relating to the award of professional services contracts for fiscal year 1990-1991 reflects that certain minority groups have improved their participation in certain City professional services contracts. However, based on the testimony and other evidence before this Board, the Board concludes

that remedial action continues to be necessary to enable these groups to overcome past discrimination in the award of professional services contracts. The Director shall closely monitor the participation of these groups in professional services contracts and report the results of such monitoring to the Board pursuant to Section 12D.6(B)2.

(A)(1) In addition to the general findings set forth in Section 12D.2 and the findings set forth in Section 12D.2-2 and 12D.11(A)3, and based upon the record before this Board, the Board hereby makes these additional findings in support of establishing subcontractor participation goals for architectural/engineering contracts:

a. The evidence before this Board relating to the award of architectural and engineering prime contracts and subcontracts for fiscal years 1989-1991 shows that Black, Asian, Latino and woman owned architectural and engineering firms continue to be awarded contract dollars in amounts that are disproportionately lower than the available numbers of Black, Asian, Latino and woman owned architectural and engineering firms willing and able to perform these services for the City. These statistically significant disparities exist despite the fact that Black, Asian, Latino and woman owned firms are entitled to a bid preference on prime architectural and engineering contracts. In light of the testimony before this Board and the Commission in 1983, 1984, 1988, 1989, 1991 and 1992, the San Francisco Redevelopment Agency in 1991, and the San Francisco Unified School District in 1991 and 1992, this Board finds that these results can be attributed in part to discriminatory contracting practices and in part

to discrimination in the local architectural and engineering industries against MBE and WBE architects and engineers. This discrimination is manifested in, and perpetuated and exacerbated by, the City's contracting practices.

b. The evidence before this Board supports the conclusion that MBEs and WBEs continue to be disadvantaged by discriminatory practices when competing for City architectural and engineering contracts, and when competing to provide subcontractor services on City architectural and engineering contracts. The weight of the testimony and other evidence before this Board supports the conclusion that nonminority architects and engineers competing for or doing business with the City and/or in the private sector limit the participation of MBE and WBE subcontractors on architectural and engineering contracts by engaging in discriminatory business practices.

c. Race-neutral measures employed by the City in the past did not prevent the discriminatory practices from occurring. Since February 1989 the City has pursued race neutral measures to facilitate MBE/WBE subcontractor participation in architectural and engineering contracts. From about February 1st to June 30, 1989 the City adopted a race-neutral disadvantaged business program for its architectural and engineering contracts. Since July 1, 1989 the City has urged prime architects and engineers to voluntarily extend subcontracting opportunities to MBE/WBE subcontractors on City architectural and engineering contracts. These race and gender neutral measures employed by the City have not been successful in the increasing MBE/WBE participation in City architectural and engineering contracts.

SEC. 12D.15(G) Extension. Pursuant to Section 12D.15(E) of Ordinance 155-92 ((175-89)), as amended, and based upon the Further Additional Findings Supporting Six Month Extension of MBE/WBE/LBE Ordinance – III set forth in Section 12D.2-2 ((Additional Findings set forth in Section 12D.2-1)), the Board hereby extends Ordinance 155-92 ((175-89)), as amended, to ((June 30, 1997)) December 31, 1997.

APPROVED AS TO FORM

LOUISE H. RENNE, City Attorney

By: /s/ Mara E. Rosales
MARA E. ROSALES
Deputy City Attorney